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RECORD, CASE No. 14,168.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~113~~. 192

JOSEPH GOTTLIEB, APPELLANT,

vs.

LEWIS C. THATCHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED SEPTEMBER 24, 1890.

RECORD, CASE No. 14,168.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 443.

JOSEPH GOTTLIEB, APPELLANT,

vs.

LEWIS C. THATCHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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1 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered that heretofore and on, to wit, the 18th day of February, A. D. 1879, came Joseph Gottlieb, by J. W. Horner, his solicitor, and filed in said court his bill of complaint and sued out of and under the seal of said court a subpoena in chancery against Lewis C. Thatcher.

And the said subpœna and marshal's return is in words and figures as follows, to wit:

Subpœna and Marshal's Return.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

The President of the United States of America to Lewis C Thatcher, Greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in April next (it being the 7th day of April, A. D. 1879), to answer the bill of complaint of Joseph Gottlieb, this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

2 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and [SEAL.] the seal of our circuit court of the United States for the district of Colorado, at the city of Denver aforesaid, this 18th day of Feb'y, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 103d year.

EDWARD F. BISHOP, *Clerk.*

Memorandum.

The above-named defendant is hereby notified that unless he shall enter his appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed and a decree entered accordingly.

EDWARD F. BISHOP, *Clerk.*

Marshal's Return.

DISTRICT OF COLORADO, *ss:*

DENVER, COLO., *Feb'y* 19, *A. D.* 1879.

I have duly executed the within writ by serving copy upon Lewis C. Thatcher at Denver, county of Arapahoe, district of Colorado, this 19th day of February, A. D. 1878.

P. P. WILCOX, *Marshal.*

Marshal's Fees.

1 def't	$2 00
Mileage, 1 mile	6
	2 06

Paid by John W. Horner.

3 (Indorsed:) Gen. No. 228. Circuit court of the United States for the district of Colorado. Joseph Gottlieb *vs.* Lewis C. Thatcher. Chancery subpœna. Returnable to rule day, first Monday in April, A. D. 1879. Edward F. Bishop, clerk. Filed this 19 day of Feb'y, A. D. 1879. Edward F. Bishop, clerk. John W. Horner, of Denver, compl't's sol'r.

And afterwards and on, to wit, the 20th day of November, A. D. 1879, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer to Bill Sustained; Leave to Amend.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. To Set Aside a Deed.

At this day comes the said complainant, by J. W. Horner, Esq.' his solicitor, and the said defendant, by J. Q. Charles, Esq., his solicitor, also comes.

And the demurrer of the said defendant to the bill of complaint herein having heretofore come on to be heard and having been argued by counsel and taken under advisement by the court, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said bill of complaint and the matters and things therein set forth are not sufficient in law for the said defendant to answer unto; nevertheless—

It is ordered by the court that the said complainant have leave to amend his said bill of complaint as he shall be advised.

4 And afterwards and on, to wit, the 22nd day of November, A. D. 1879, the same being one of the regular juridical days

of the October term, A. D. 1879, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Complainant to Amend Bill in 15 *Days.*

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. To Set Aside a Conveyance.

At this day comes the said complainant, by J. W. Horner, Esq., his solicitor, and the said defendant, by J. Q. Charles, Esq., his solicitor, also comes.

And thereupon, on his motion, it is ordered that the said complainant have leave to amend his bill of complaint herein within fifteen (15) days from this day, as he shall be advised.

And afterwards and on, to wit, the 6th day of December, A. D. 1879, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Complainant to Amend Bill in 5 *Days.*

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. To Set Aside a Conveyance.

At this day comes the said plaintiff, by J. W. Horner, Esq., his attorney, and thereupon, on his motion, it is ordered that the said plaintiff have leave to amend his bill of complaint herein within five (5) days from this day, as he shall be advised.

5 And afterwards and on, to wit, the 9th day of May, A. D. 1881, the same being one of the regular juridical days of the May term, A. D. 1881, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Complainant to Amend Bill in 10 *Days.*

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. To Set Aside a Conveyance.

At this day comes the said complainant, by L. P. Marsh, Esq., his solicitor, and the said defendant, by H. C. Dillon, Esq., his solicitor, also comes.

And the demurrer of the said defendant to the bill of complaint

herein as amended coming on now to be heard, and the court being sufficiently advised in the premises, it seemeth to the court here that the said bill of complaint as amended is not sufficient in law, & so the said demurrer is sustained.

And thereupon leave is granted the said complainant by the court to again amend his said bill of complaint in ten (10) days from this day, as he shall be advised;

And afterwards and on, to wit, the 12th day of May, A. D. 1881, came again the said complainant, by Messrs. Horner & Marsh, his solicitors aforesaid, and filed in said court and in said cause his 2d amended bill against the said defendant.

And the said 2d amended bill is in the words and figures as follows, to wit.

Second Amended Bill.

Circuit Court of the United States for the District of Colorado.

6 To the judges of the circuit court of the United States for the district of Colorado:

Joseph Gottlieb, of the city of Denver, and who is a citizen of the State of Colorado, brings this his bill against Lewis C. Thatcher, who is a citizen of St. Louis, in the State of Missouri:

Thereupon your orator complains and says—

That — the April term of the district court within and for the county of Arapahoe, in the then Territory, now State, of Colorado, A. D. 1874, one Samuel Kaucher in and by the judgment of said court recovered a judgment against one Samuel H. Thatcher, who is deceased, in an action at law for the sum of twenty-seven hundred and ten dollars and forty cents damages, besides costs of suit.

That on the 18th day of June, 1874, an abstract of the judgment aforesaid was duly filed for record in the office of the clerk and recorder in and for the county of Arapahoe, in the then Territory and now State, of Colorado; that no execution was ever issued thereon until the 29th day of January, A. D. 1878, as hereinafter stated.

Your orator further alleges that at the time of the rendition of said judgment said Samuel H. Thatcher was seized in fee simple of the following parcels of land lying and being in said county of Arapahoe, to wit: Lot numbered twenty-seven (27), in block seventy-eight (78), and lot four (4), in block one hundred and sixty-five (165), in the east division of the city of Denver, in said county, and also

and

of the northeast quarter ($\frac{1}{4}$) of * the southwest quarter ($\frac{1}{4}$) of section twenty four (24) and the east half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section twenty-six (26), in township one (1) south, and the southeast quarter ($\frac{1}{4}$) of section twenty-four (24), in township three (3) south, all in range sixty-seven west and in said county of Arapahoe.

* Word "and" interlined and word "of" erased by me June 5, 1882, per stipulation.

EDWARD F. BISHOP, *Clerk.*

7 Your orator further charges and alleges that on the 13th day of November, A. D. 1876, and for some time prior thereto the said Samuel H. Thatcher was indebted to your orator upon a certain promissory note for the principal sum of twenty-seven hundred dollars and interest thereon; that on said 13th day of November the said Samuel H. Thatcher being largely indebted also to other parties was insolvent and had no other property out of which said indebtedness could be paid than the several parcels of real estate hereinbefore described, and being so insolvent and with the intent to hinder and delay his creditors, and with the intent to defraud your orator from collecting the indebtedness due him aforesaid, executed a deed with covenants of warranty for said lands to his brother, said Lewis C. Thatcher, then and now a resident of St. Louis, in the State of Missouri; that such conveyance to said Lewis C. Thatcher was without the knowledge of said grantee and was without consideration and was made with the fraudulent intent aforesaid; that on the 18th day of November following said Samuel H. Thatcher without the knowledge of the said Lewis C. Thatcher and without any delivery to said Lewis C. Thatcher of said deed caused said deed to be filed for record in Book 86, page 566 of the records of Arapahoe county aforesaid.

That afterwards, with full knowledge of the fraudulent intent and purpose of the said Samuel H. Thatcher in the premises, and in furtherance of said fraud and pretended sale, said Lewis C. Thatcher executed to the said Samuel H. Thatcher his certain promissory notes for about the sum of four thousand dollars, under the pretext that said notes formed a consideration for the sale of said lands.

Your orator orator charges the fact to be that said promissory notes nor any part thereof were ever intended to be paid, and that no part thereof ever was paid.

8 Your orator further charges and alleges that on the 25th day of November, A. D. 1876, this complainant commenced and action in the district court of said Arapahoe county against the said Samuel H. Thatcher upon the aforesaid indebtedness of the said Samuel H. Thatcher to this complainant, in which case such proceedings were had that on the 23rd day of July, 1877, it being the April term of said court, in said cause your orator obtained a personal judgment against the said Samuel H. Thatcher for the sum of twenty-one hundred and seventy-one dollars ($2,171) *dollars* damages and costs of suit; that on the 24th day of July following an execution on said judgment was duly issued out of said court, directed to the sheriff of the said county of Arapahoe; that such execution duly came to the hands of the said sheriff and by virtue thereof said sheriff levied the same upon the said lands hereinbefore described, and after duly advertising the same according to law, in pursuance of the command of the said execution, such sheriff publicly sold the same as commanded by said writ to this complainant, he being the highest and best bidder therefor; that said sheriff at the time of said sale executed and delivered to this complainant a certificate of sale of said premises in accordance with the law in such cases made and provided, and caused a duplicate thereof to be

duly recorded in the office of the clerk and recorder within and for the said county of Arapahoe; that on the 19th day of July, A. D. 1878, said premises not having been redeemed from said sale, the said sheriff of Arapahoe county executed and delivered to this complainant his deed for the premises aforesaid in accordance with the law in such case made and provided, which said deed was duly recorded in Book 104, on page 43, of the records of said county on the 1st day of August, A. D. 1878.

9 Your orator further charges and alleges that on the 29th day of January, 1878, an execution was issued out of the district court of said Arapahoe county upon the judgment hereinbefore recited against the said Samuel H. Thatcher and in favor of the said Samuel Kaucher, which said execution duly came into the hands of the sheriff of said county for execution of the same, and said sheriff, in pursuance of the command therein, levied the same upon the lands hereinbefore described, and under and by virtue of said execution duly put the same to sale, when the said lands were by said sheriff duly sold and bid in by said Lewis C. Thatcher at the instance and request of said Samuel H. Thatcher, and that the amount *and* moneys so bid for said land and lots was paid to the said sheriff out of the moneys of the said Samuel H. Thatcher and not out of the moneys of the said Lewis C. Thatcher; that such pretended sale of said lands to the said Lewis C. Thatcher was, by the said Samuel H. Thatcher and the said Lewis C. Thatcher, procured and made for the purpose of hindering and delaying and defrauding the creditors of him, the said Samuel H. Thatcher; that no consideration or moneys of the said Lewis C. Thatcher were paid or intended to be paid for and on account of said purchase and sale, but the same was had and made with the intent and for the purpose alone of defrauding the creditors of him, the said Samuel H. Thatcher; that in furtherance of said design and purpose and at the instance of the said Samuel H. Thatcher and with like intent to hinder, delay, and defraud his creditors a certificate of sale of the premises aforesaid, in accordance with the law in such case made and provided, was given by the sheriff to the said Lewis C. Thatcher and a duplicate thereof recorded in the office of the clerk and recorder of said county; and afterwards, and with a like intent

10 and purpose, the said Samuel H. Thatcher procured and caused a deed to be made by the sheriff aforesaid and delivered to the said Lewis C. Thatcher for said premises.

Complainant alleges that during all said period said Samuel H. Thatcher was insolvent save and except his interest and title in and to the lands hereinbefore described, and the said Lewis C. Thatcher, with the like intent to aid and abet the said Samuel H. Thatcher in his said intent and purpose to hinder, delay, and defraud the creditors of him, the said Samuel H. Thatcher, procured to be made an accepted the deeds hereinbefore recited to him and in all said acts and doings, with full knowledge in the premises, co-operated with him, the said Samuel H. Thatcher, in such intent and purpose.

And now the said Lewis C. Thatcher, in furtherance of said fraudulent intent and purpose, claims and pretends that he has the legal

title to said parcels of land in and by virtue of said deed of said Samuel H. Thatcher to him hereinbefore recited and in an- by virtue of said certificate of purchase at such sheriff's sale hereinbefore recited and the deed given him by said sheriff in pursuance of such sheriff's sale and hereinbefore recited, and that said Lewis C. Thatcher makes claim to the title to said premises under and by virtue of no other deeds or conveyances.

All of which actions, doings, and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

Your orator alleges that the matters in dispute herein, exclusive of costs, exceed the sum of five hundred dollars; to the end, therefore, that justice may be done, your orator prays this honorable court to adjudge, declare, and decree that the said deed of conveyance of the said Samuel H. Thatcher to said Lewis C. Thatcher, hereinbe-
11 fore recited, may be declared null and void and the pretended sale, conveyance, and deed by the sheriff of said premises to the said Lewis C. Thatcher, hereinbefore recited, may be declared null and void; that the legal title in said premises in fee simple be declared, adjudged, and decreed to be in your orator, and that your orator may have such other and further relief in the premises as the nature of the case may require.

And may it please your honors to grant unto your orator a writ of subpœna of the United States, issuing out of and under the seal of this honorable court, directed to the said Lewis C. Thatcher, defendant, commanding him, on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court, then and there to answer all and singular the premises, not upon his corporal oath, his oath being hereby expressly waived, and to stand by, abide, and perform all and singular such decree, order, and judgment as this court may make and render in the premises.

JOSEPH GOTTLIEB,
By HORNER & MARSH,
His Att'ys, &c.

STATE OF COLORADO, }
County of Arapahoe, }

On this twelfth day of May, A. D. 1881, before me personally appeared the above-named Joseph Gottlieb and made oath that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information or belief, and that as to those matters he believes it to be true.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 12th day of May, A. D. 1881.

WILLIAM H. MALONE, [SEAL.]
Notary Public.

12 (Indorsed:) 228. Circuit court U. S. Joseph Gottlieb *vs.* Lewis C. Thatcher. 2d amended bill. Filed May 12, 1881. Edward F. Bishop, clerk. Horner & Marsh.

And afterwards and on, to wit, the 11th day of July, A. D. 1881, the same being one of the regular juridical days of the May term, A. D. 1881, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer to Second Amended Bill Overruled.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. To Set Aside a Conveyance.

At this day comes the said defendant, by H. C. Dillon, Esq., his solicitor.

And the demurrer of the said defendant to the second amended bill of complaint herein having heretofore come on to be heard by the court and having been taken under advisement by the court, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said bill of complaint as 2dly amended is sufficient in law to be answered, and so the said demurrer is overruled.

And thereupon it is ordered by the court that the said defendant answer herein by or before the August rule day next.

And afterwards and on, to wit, the 1st day of August, A. D. 1881, came the said defendant, by Messrs. Charles and Dillon, his solicitors, and filed in said court and in said cause his answer to the bill of complaint heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

13 *Answer.*

In the Circuit Court of the United States for the District of Colorado.
In Chancery.

The answer of Lewis C. Thatcher to the bill of complaint of Joseph Gottlieb, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereunto, or unto so much and to such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith:

He admits that at the April term of the district court of Arapahoe county, in the then Territory, now State, of Colorado, in the year A. D. 1874, one Samuel Koucher recovered the judgment mentioned

in the said complaint against the said Samuel H. Thatcher; that afterwards, on the 18th day of June, A. D. 1874, a transcript of said judgment was filed for record in said county as mentioned in the said complaint, but denies that execution was never issued thereon until the 29th day of January, A. D. 1878.

Admits that at the time of the rendition of the said judgment the said Samuel H. Thatcher was seized in fee simple of the parcels of land mentioned in the said complaint.

And this defendant, further answering, says he knows not and has not been informed, save by the said complainant's bill, and cannot set forth as to his belief or otherwise whether on the 18th
14 day of November, A. D. 1875, or at any other time, the said Samuel H. Thatcher was indebted to the complainant or any other parties, as mentioned in the said complaint, but denies that on said day or at any of the times mentioned in the said complaint the said Samuel H. Thatcher was insolvent and had no other property than that mentioned in the said complaint, but of which his just debts and liabilities could be paid; denies that the said Samuel H. Thatcher, with intent to hinder and delay his creditors or with intent to defraud the plaintiff from collecting his alleged indebtedness, executed a deed for the said lands mentioned in the complaint to this defendant, but admits that on or about said date the said Samuel H. Thatcher bargained, sold, and conveyed to this defendant by warranty deed containing full covenants of warranty the lots and parcels of land mentioned in the said complaint, but alleges the truth to be that the said sale and conveyance was in all respects made, executed, and delivered in good faith and for a valuable consideration; denies that the said conveyance was made, executed, or delivered without the knowledge of this defendant; denies that it was without consideration and that it was made with any fraudulent intent whatsoever, and denies that said conveyance was filed for record or recorded as alleged in the said complaint without the knowledge of this defendant.

Admits that in payment of the purchase price of said lots and parcels of land he executed and delivered to the said Samuel H. Thatcher his promissory notes, but denies that they were so executed under any pretext or with any intent other than in good faith to purchase the said lots; denies that said promissory notes were never intended to be paid, and denies that no part thereof ever has been paid, and, on the contrary, alleges the truth to be that the said promissory notes and all of them have been and now
15 are fully paid.

And this defendant, further answering, says he knows not and has not been informed, save by the said complainant's bill, and cannot set forth as to his belief or otherwise whether the said complainant on the 25th day of November, A. D. 1876, or at any other time commenced an action in the district court of said Arapahoe county against said Samuel H. Thatcher upon the alleged indebtedness mentioned in the complaint; nor whether such proceedings were had therein that afterwards, as mentioned in the said complaint, the judgment was obtained against the said Samuel H.

Thatcher in favor of the complainant for two thousand one hundred and seventy-one dollars ($2,171) and costs of suit or any other sum; nor whether execution upon said judgment was issued or levied upon the said lands; nor whether the said lands under said execution were advertised, sold, and bid in by the complainant; nor whether a certificate of sale was issued to the complainant; nor whether a duplicate thereof was recorded; nor whether the said lands were redeemed from such sale; nor whether the sheriff executed and delivered to the complainant a deed for said premises according to law; nor whether said deed was afterwards recorded, as charged in the said complaint.

This defendant, further answering, admits that on or about the 29th day of January, A. D. 1878, an execution was issued upon the said Koucher judgment against the said Samuel H. Thatcher; that said execution was levied upon the lands mentioned in the said complaint, and pursuant to the said levy said lands were sold and bid in by this defendant, but denies that the same was sold or bid in at the instance or request of the said Samuel H. Thatcher; denies that the amount so bid for said land and lots was paid to the sheriff of said county out of the moneys of the said Samuel H. Thatcher, and, on the contrary, avers that the moneys so paid and bid were then and there the moneys of this defendant; denies that said sale procured by this defendant and the said Samuel H. Thatcher for the purpose of hindering, delaying, or defrauding any creditor of the said Samuel H. Thatcher, and, on the contrary, that the same was bid in and paid for by this defendant for the sole and only purpose of relieving the same from the lien of the judgment in favor of the said Samuel Koucher; denies that no consideration or moneys of this defendant were ever paid or intended to be paid for and on account of the said purchase and sale; denies that the same was had or made with intent or for the purpose of defrauding the creditors of the said Samuel H. Thatcher.

Admits that the certificate of sale of the said premises was according to law executed and delivered to this defendant by the sheriff and a duplicate thereof recorded as alleged in the said complaint, but denies that said certificate was made or recorded in furtherance of any design whatever or with any intent to hinder, delay, or defraud any creditor of the said Samuel H. Thatcher, and further denies that the same was made at the instance and request of the said Samuel H. Thatcher.

Admits that afterwards a deed to said premises was made, executed, and delivered by the sheriff of Arapahoe county to this defendant, but denies that the same was procured or caused to be executed and delivered at the instance and request of the said Samuel H. Thatcher.

And, further answering, this defendant denies that during all of said period said Samuel H. Thatcher was insolvent; denies that subsequent to the sale and conveyance of the said lands and lots to this conveyance, mentioned in the said complaint, the said Samuel H. Thatcher held or retained any interest, right, or title whatever in and to the said land and lots or any part thereof.

And, further answering the said complaint, this defendant denies that in purchasing the said lands and lots from the said Samuel H. Thatcher or in bidding the same in at the said sheriff's sale under the said Koucher judgment he acted with any intent to aid or abet the said Samuel H. Thatcher in any intent or purpose which he may have had (and this defendant denies that he had any such intent or purpose) to hinder, delay, or defraud his creditors; denies that in any way or manner whatsoever he has co-operated with the said Samuel H. Thatcher in any intent or purpose upon his part to hinder, delay, or defraud any of his creditors.

This defendant admits that he claims to have and does have the legal title in fee simple to the said parcels of land, and that he acquired his title to the same under and by virtue of said warranty deed and sheriff's deed last mentioned.

And further avers that ever since the purchase thereof as aforesaid he has been in the quiet, undisturbed, exclusive, and undisputed possession thereof.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; without this, that there is any other matter, cause, or thing in said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, traversed, avoided, and denied, is true to the knowledge and belief of this defendant; all of which matters and things this defendant is willing to aver, maintain, and prove as this honorable court may direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in
18 this behalf most wrongfully sustained.

LEWIS C. THATCHER,
By CHARLES AND DILLON,
His Solicitors.

(Indorsed:) 228. Circuit court of the United States for the district of Colorado. Joseph Gottlieb *v.* Lewis C. Thatcher. Equity. Answer. Filed Aug. 1, 1881. Edward F. Bishop, clerk. Charles and Dillon, d'f't's solicitors, Denver.

And afterwards and on, to wit, the 7th day of October, A. D. 1881, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his replication to the answer heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication.

Circuit Court of the United States for the District of Colorado.

The replication of Joseph Gottlieb, plaintiff, to the answer of Lewis C. Thatcher, defendant.

To the judges of the circuit court of the United States for the district of Colorado:

This repliant, saving and reserving to himself all and all man-

ner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this re-
19 pliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Indorsed:) 228. U. S. circuit court. Joseph Gotlieb *vs.* Lewis C. Thatcher. Replication. Filed Oct. 7, 1881. Edward F. Bishop, clerk. Horner & Marsh.

And afterwards and on, to wit, the 4th day of May, A. D. 1882, the same being one of the regular juridical days of the May term, A. D. 1882, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Time to Take Testimony Extended.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance.

At this day comes the said complainant, by J. W. Horner, Esq., his solicitor, and the said defendant, by H. C. Dillon, Esq., his solicitor, also comes.

And the motion of the said complainant to again amend his bill of complaint herein coming on now to be heard, and the said defendant now here consenting thereto, it is ordered that the said motion be granted.

And thereupon, on motion of the said defendant, the said complainant now here consenting thereto, it is ordered that testimony may be taken herein before an examiner by or before the first day of the next regular term.

20 And afterwards and on, to wit, the 13th day of June, A. D. 1882, before the clerk of said court, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Reference to Examiner.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance.

This cause being at issue on bill, answer, and replication, now, on motion of J. W. Horner and J. A. Bentley, the complainant's solic-

itors—Messrs. Charles & Dillon, solicitors for the defendant, consenting thereto—it is ordered that it be referred to John W. Webster, Esquire, one of the examiners of this court, to take the testimony on the part of both parties. Said examiner will observe the stipulations between the parties which have been or shall be made as to the division of time and the order of taking testimony, unless otherwise directed, and will make report of the testimony taken and all the proceedings in this behalf to the court before the first day of the next (October) term.

And afterwards and on, to wit, the 18th day of July, A. D. 1882, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him as such examiner.

And the said report is in words and figures as follows, to wit:

Special Report of Examiner.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

21 JOSEPH GOTTLIEB } Special Report of Examiner.
v.
LEWIS C. THATCHER. }

To the Honorable Moses Hallett, judge of said court, in chancery presiding:

Your examiner reports as follows: That during the taking of the testimony of witnesses William Trounstine and Robert S. Wilson on behalf of the defendant this 17th day of July, A. D. 1882, the defendant's counsel asked the following questions of witness Trounstine in direct examination:

Q. State your name, age, occupation, and place of residence.

Ans. My name is William Trounstine; age, 30 years; occupation, merchant, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb; if so, how long have you known him and where has he resided during that time?

Ans. Yes, sir; I know him. I have known him about 8 or 10 years and he has resided in Denver most of the time.

Q. Do you know the reputation of the said Joseph Gottlieb in that community for truth and veracity and in particular among his acquaintances in the neighborhood where he dwelt during that time?

Ans. Yes, sir.

Q. Is that reputation good or bad?

Ans. Bad.

Q. From your knowledge of that reputation would you believe

him under oath in any case where he has a pecuniary interest at stake?

Comp't's counsel objects because that is improper and not allowable under the rules of evidence.

Ans. I would not.

22 Cross-examination by J. W. HORNER, Esq., for complain-ts:

Q. Mr. Trounstine, who did you ever hear speak of Mr. Gottlieb's reputation for truth and veracity? Mention all the names of the persons whom you have heard speak of his reputation for truth and veracity.

Def't's counsel objects because it calls for confidential communications and the names of parties which it would be a breach of confidence in the witness to communicate.

Ans. I have heard a great many. I don't feel at liberty to mention the names of the parties that I have heard speak of his reputation for truth and veracity.

Q. Please mention the name of some person whom you heard speak of Mr. Gottlieb'- reputation for truth and veracity.

Def't's counsel objects for same reason last above stated.

Ans. I don't feel at liberty to state who they were or give their names.

Q. Do you positively decline to give the name or names of any person or persons whom you have heard speak of Mr. Gottlieb's reputation for truth and veracity?

Def't's counsel objects because it is an attempt to compel the witness to disclose privileged communications which the witness is not obliged to give except under an order from the court, and because not proper cross-examination.

Ans. Yes, sir.

* * * * * * *

The defendant also produced ROBERT S. WILSON, and counsel for defendant asked him the following questions in direct examination:

23 Q. State your name, age, occupation, and place of residence.

Ans. My name is Robert S. Wilson; age, 55 years; occupation, auction & commission, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb? If so, how long have you known him and where has he resided during that time?

Ans. I do know him—probably have known him about 14 or 15 years, and, with the exception of about one year, he has resided in Denver during that time.

Q. Do you know what the reputation of said Joseph Gottlieb is

for truth and veracity in the said city of Denver and, in particular, among his acquaintances in the neighborhood where he resides?

Ans. No.

Q. Do you know the reputation of the said Joseph Gottlieb for truth and veracity in the said city of Denver?

Ans. I don't think I know what the general opinion of the community is.

Q. Have you heard the complainant's reputation for truth and veracity discussed among his acquaintances in the said city of Denver? If so, how frequently?

Compl't's counsel objects because it is not a proper question in an examination upon this subject and should be asked only as to what the witness knows as to the general reputation of the complainant where he is best known.

3d. Because the witness has shown by his answer to the former questions that he does not know what the general reputation of the complainant is where he is best known for truth and veracity.

Ans. I have on a number of occasions.

Q. Please state, from what you know of that reputation and from what you have heard said about it among his acquaintances,
24 whether that reputation is good or bad.

Compl't's counsel objects because the question is improper because it couples with it more than is allowable to be asked under the rules of evidence; also because no proper foundation has been laid showing that the witness is qualified to answer it.

Ans. In these discussions it was decidedly bad.

Q. Please state whether from your own knowledge of that reputation it is good or bad.

Compl't's counsel objects because it is improper and not allowable under the rules of evidence.

Ans. I shall not answer it.

Q. From your knowledge of that reputation would you believe said Joseph Gottlieb under oath in case where he has a pecuniary interest at stake?

Compl't's counsel objects because improper under the rules of evidence; also because no proper foundation has been laid showing that the witness is qualified to answer.

Ans. If I were a juryman on such a case I should touch that part of the evidence very tenderly.

Cross-examination by J. W. HORNER, Esq., counsel for compl'ts:

Q. Mr. Wilson, name all the persons whom you have heard speak of Mr. Gottlieb's reputation for truth and veracity.

Def't's counsel objects because it is not proper cross-examination.

Ans. That would be impossible for me to do.

Q. Name all the persons whom you now remember to have heard speak of Mr. Gottlieb's reputation for truth and veracity.

25 Def't's counsel objects for same reasons last above stated.

Ans. I cannot do it.

Compl't's counsel objects to the answer because by changing it from shall not to cannot, at the instance of counsel for defendant, shows a disposition on the part of witness and counsel to evade the question and prolong the examination.

Q. State the names of all persons that you can whom you remember to have heard speak of Mr. Gottlieb's reputation for truth and veracity.

Def't's counsel objects for same reasons last above stated.

Ans. I will not state them for the reason that I am informed that at least two of them are under obligations to him and have requested me not to name them.

At this point complainant's counsel asks that the further examination of witnesses be suspended until the matter can be reported to the judge of the circuit court of the United States and a decision had thereon whether the two witnesses examined to-day, viz., William Trounstine and Robert S. Wilson, shall answer the last questions propounded to them, as above set forth, further than they have already answered.

To which the def't's counsel objects to a suspension of the cross-examination of this witness (Robert S. Wilson) except as to the question and answer in controversy between the counsel and witness, and insists that the cross-examination must proceed or be waived as to all other matters.

26 Thereupon your examiner, being powerless in the premises to compel the witness to answer in accordance with the demands of the counsel for complainant, this matter is most respectfully referred to your honor's consideration, viz., whether these two witnesses shall be compelled to further answer the two or three last questions propounded on cross-examination, as above recorded and demanded by counsel for complainant.

And thereupon your examiner continued the further taking of the testimony of this last witness until Tuesday, July 18th, A. D. 1882, at the hour of two o'clock p. m., at his office, to await your honor's decision in the premises.

All of which is most respectfully submitted.

JOHN W. WEBSTER, *Examiner.*

Denver, July 17th, 1882.

(Indorsed:) No. 228. Circuit court U. S. Joseph Gottlieb, pl'ff, *vs.* Lewis C. Thatcher, def't. Special report of examiner. Filed Jul- 18, 1888. Edward F. Bishop, clerk.

And afterwards and on, to wit, the 15th day of September, A. D. 1882, came Robert H. Buck, Esq., an examiner in chancery of said

court, and filed in said court and in said cause his report of the testimony taken before him as such examiner.

And the said report is in words and figures as follows, to wit:

Examiner's Report. Testimony of Zella Glenmore, Behalf Defendant.

In the Circuit Court of the United States for the District of Colorado.

27 JOSEPH GOTTLIEB, Pl'ff, *v.* LEWIS C. THATCHER, Def't. } No. 228. Equity.

Agreed that the defendant may take testimony in this case on his own behalf at Leadville, in the county of Lake and State aforesaid, before Robert H. Buck, Esq., one of the examiners of said court, beginning on Monday, the 11th day of September, 1882, at the hour of ten o'clock a. m., with the same effect as if the said testimony had been taken before John W. Webster, Esq., the present examiner in said cause, but all such testimony must be closed, at Leadville aforesaid, on the part of the defendant by the — day of September, A. D. 1882.

Sept. 8th, 1882.

CHARLES & DILLON, *For D'f'ts.*
J. A. BENTLEY &
J. W. HORNER,
Compl't's Att'ys.

[Endorsed:] 228. In the circuit court of the United States, district of Colorado. Joseph Gottlieb, pl'ff, *vs.* Lewis Thatcher, def't. No. 228, equity. Stipulation. Filed Sep. 15, 1882. Edward F. Bishop, clerk.

In the Circuit Court of the United States for the District of Colorado.

JOSEPH GOTTLIEB *v.* LEWIS C. THATCHER. } No. 228. Equity.

The deposition of Zella Glenmore, of Leadville, in the county of Lake and State of Colorado, a witness of lawful age, produced, duly cautioned, sworn, and examined upon oath on the 12th day of September, A. D. 1882, by adjournment from the 11th day of September, A. D. 1882, beginning at the hour of 10 o'clock
28 a. m., by and before me, Robert H. Buck, and examiner of said court, duly appointed and qualified, pursuant to the stipulation hereunto attached.

On this 11th day of September, 1882, there being no appearance on the part of the complainant, the taking of testimony herein was by consent of counsel for defendant by me adjourned to September 12, 1882, at 10 o'clock a. m.

And on this 12th day of September, A. D. 1882, at ten o'clock a. m., the said ZELLA GLENMORE, having been by me duly sworn, testified as follows in response to interrogatories to him propounded by HENRY C. DILLON, solicitor for respondent:

Int. 1. State your name, age, and residence.

Ans. Zella Glenmore; age, 37 years; residence, 206 West Second St., Leadville, Colo.

Int. —. Are you acquainted with the parties to this suit? If yea, how long have you known them respectively?

Ans. I know Mr. Joseph Gottlieb, the complainant; have known him ever since 1870; do not know Lewis C. Thatcher, the defendant.

Int. 3. Were you acquainted with Samuel H. Thatcher in his lifetime? If yea, how long did you know him prior to his death?

Ans. I knew him from 1870 till the time he died, in 1879.

Int. 4. Did you have a business transaction with the complainant, Joseph Gottlieb, in October, 1875, to which said Samuel H. Thatcher was a party? If yea, state what that transaction was.

Ans. In October, 1875, I got money from him to buy out Rhoda Devens, in Denver. I gave my note and Mr. Thatcher went security. The note was $2,700.

Int. 5. Please look at this paper marked Exhibit 18, purporting to be a chattel mortgage from Zella Glenmore to Joseph Gott-
29 lieb. Please state whether you are the same Zella Glenmore mentioned in that mortgage and the circumstances under which you executed it.

(Complainant objects for the reason that the circumstances under which the mortgage was given are irrelevant and immaterial.)

Ans. I am the same Zella Glenmore. I made the mortgage because I didn't have the money of my own and I had to give Mr. Gottlieb the mortgage on the furniture or he wouldn't give me the money.

Int. 6. How much money had you borrowed from Mr. Gottlieb and for what time?

(Objected to as immaterial.)

Ans. $2,700. I think it was for a year; I think that is what the note reads.

Int. 7. Is the note last mentioned by you the same promissory note mentioned in this chattel mortgage as purporting to have been executed by you and one Samuel H. Thatcher to the said Joseph Gottlieb and bearing date Nov. 18, 1875, and payable on or before Nov. 18, 1876.

Ans. It is.

Int. 8. In what capacity did the said Samuel H. Thatcher sign that note, and how much of that $2,700 went to his separate use?

(Objected to because the note shows for itself in what capacity he signed it, &, secondly, because it is immaterial how much of the money he had to his own use.)

Ans. Well, I hardly know how to answer that. He signed it for me for me to get the money. He didn't get any of it. I paid it to Rhoda Devens for this furniture.

Int. 9. What and how many payments did you make on that note?

(Objected to as immaterial.)

30 Ans. I paid every month $135 up to the last month, when I paid $50.

Int. 10. What did Gottlieb then do with reference to this furniture?

(Objected to as incompetent and immaterial.)

Ans. He took it at the expiration of one year and removed it to Larimer street and there he sold it at auction.

Int. 11. Please state, to the best of your recollection, whether or not Mr. Gottlieb did or did not take possession of that furniture on the 17th day of November, 1876.

(Objected to as immaterial.)

Ans. He did.

Int. 12. Whom did he place in possession of the property?

(Objected to as immaterial.)

Ans. Bob Wilson.

Int. 13. Is he the same Mr. Wilson commonly known in Denver as Colonel Robert S. Wilson?

Ans. He is.

Int. 14. Did you have any conversation with Mr. Gottlieb with reference to an extension of the time of payment of that note or with reference to any tender or offer by the said Samuel H. Thatcher to pay your indebtedness if Mr. Gottlieb would not seize that furniture? If yea, state what Mr. Gottlieb told you and when and where the conversation took place.

(Objected to as incompetent and immaterial.)

Ans. I did on the night before he took the furniture. It was in in my bedroom, where I was sick in bed at the time—in Denver. I asked him if he was going to take the furniture, and he said he would unless the money was paid over. I told him I didn't
31 have the money, and if he would let the furniture remain and give me another year I would try to pay the whole bill. He said if he did that that would break his contract with Thatcher and he couldn't hold him responsible for it. I wanted him to release Sam. Thatcher and he said he wouldn't do it and said the furniture was worth more to him than the note. He said Sam. had offered to pay him the balance over what I had paid and he said he wouldn't take it; that that was not business. That was the principal part of the conversation.

Int. 15. Please look at the paper marked "Exhibit 12" purporting to be a promissory note for $200, with a blank date, and pur-

porting — be signed by Zella Glenmore and Sam. H. Thatcher, and state whether or not that is a copy of the promissory note above mentioned by you.

Ans. It is.

Int. 16. Before purchasing that furniture of Rhoda Devens did you have its value appraised by anybody? If yea, by whom, and at what value was it appraised?

(Objected to as immaterial and calling for hearsay evidence.)

Ans. I did. By Mr. Robert S. Wilson. He was then auctioneer for Strickler & Mahar. He told me the furniture was cheap at $6,000; that it was worth that.

Int. 17. Were you acquainted with the value of that kind of furniture in the market at Denver, Colorado, at the time you bought it? If yea, what, in your own judgment, was it worth?

(Objected to as immaterial and incompetent and calls for hearsay evidence.)

Ans. I was. I considered it was worth between $5,000 and $6,000. I know it cost her that.

32 Int. 18. How much less, if any, than that sum was it worth in that market when Mr. Gottlieb seized it?

(Objected to as incompetent and immaterial.)

Ans. Well, it was in as good repair when he took it as when I got it, because I was very particular with it, not to have it damaged. Of course, the carpets were worn some.

ZELLA GLENMORE.

Subscribed and sworn to this 12th day of September, A. D. 1882, before me—

ROBERT H. BUCK, *Examiner.*

And thereupon, cross-examination having been waived by respondent, and no further witnesses being produced, the taking of testimony herein before me under the said stipulation was by me adjourned without day.

ROBERT H. BUCK, *Examiner.*

I, the above-named Robert H. Buck, a duly appointed and qualified examiner of the circuit court of the United States within and for the district of Colorado, do hereby certify that before the examination of the said witness, Zella Glenmore, in the said cause between Joseph Gottlieb, complainant, and Lewis C. Thatcher, respondent, she, the said witness, was by me duly cautioned and sworn to testify the truth in relation to the matters in controversy between the said parties; that said deposition was taken by me at Leadville, in the county of Lake and State of Colorado, on the 12th day of September, A. D. 1882, by adjournment from the 11th

33 day of said September, beginning at the hour of ten o'clock in the forenoon; that the foregoing deposition was reduced

to writing by me, and that after the same was so taken and reduced to writing the same was by me read over to said deponent, and was thereupon by her subscribed and sworn to before me at the place and on said 12th day of September, A. D. 1882; that the parties to said suit, by their respective solicitors, J. A. Bentley and Henry C. Dillon, were present during the whole time of the taking of said deposition; and I do hereby certify that I am not of counsel to either of the parties to said cause nor interested in the event of the same.

Witness my hand, at said Leadville, this 12th day of September, A. D. 1882.

ROBERT H. BUCK, *Examiner.*

Fees, $16.60.

Paid by H. C. Dillon, Esq., counsel for defendant.

(Indorsed:) 228. Circuit court U. S. Joseph Gottlieb *vs.* Lewis C. Thatcher. Deposition of Zella Glenmore on behalf of def't. Opened, published, and filed Sep. 15, 1882. Edward F. Bishop, clerk.

And afterwards and on, to wit, the 30th day of September, A. D. 1882, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him as such examiner.

And the said report is in words and figures as follows, to wit:

Examiner's Report.

TUESDAY, *June 13th, A. D.* 1882.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } In Chancery. Bill to Set Aside a Conveyance.

34 This cause being at issue on bill, answer, and replication, now, on motion of J. W. Horner and J. A. Bentley, the complainant's solicitors, Messrs. Charles & Dillon, solicitors for the defendant, consenting thereto, it is ordered that it be referred to John W. Webster, Esq., one of the examiners of this court, to take the testimony on the part of both parties. Said examiner will observe the stipulations between the parties which have been or shall be made as to the division of time and the order of taking testimony, unless otherwise directed, and will make report of the testimony taken and all the proceedings in this behalf to the court before the first day of the next (October) term.

A true copy as of record.

Teste:

[SEAL.]

EDWARD F. BISHOP, *Clerk,*
By WM. E. ROGERS, *Deputy.*

In the Circuit Court of the United States for the District of Colorado. In Equity.

JOSEPH GOTTLIEB, Complainant,
vs.
LEWIS C. THATCHER, Defendant.

On application of the complainant, by J. A. Bentley, Esq., his solicitor, it appearing that the said complainant desires the evidence to be adduced in said cause to be taken orally under the sixty-seventh rule of the Supreme Court of the United States and amendments, it is ordered that Tuesday, the 20th day of June, A. D. 1882, at ten o'clock a. m., at my office in Denver, be, and is hereby, fixed as the time and place for taking the same, and that three days' notice be given to defendant's solicitor of time and place at which the examination of witnesses in said cause will commence and proceed under the order of the court.

Dated at Denver this June 16th, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

In the Circuit Court of the United States for the District of Colorado. In Equity.

JOSEPH GOTTLIEB, Complainant,
vs.
LEWIS C. THATCHER, Defendant.

To Messrs. Charles & Dillon, solicitors for the above-named defendant:

Take notice that the complainant desires the evidence to be adduced in the above-entitled cause to be taken orally under the sixty-seventh rule in equity, prescribed by the Supreme Court, and by an order of John W. Webster, Esq., one of the examiners of said court, lately made in said cause. it is directed that three days' notice of the time and place at which the examination of witnesses in said cause will commence be given to the defendant's solicitors. You will further take notice that the examination of witnesses on behalf of the complainant in said cause will commence before the said examiner at his office, in the city of Denver, on the 20th day of June, A. D. 1882, at ten o'clock a. m., and proceed as said examiner may direct under the order of the court.

Dated at Denver this June 16th, A. D. 1882.

We hereby acknowledge service on us of a copy of the within notice this 16th day of June, A. D. 1882.

CHARLES & DILLON,
Solicitor- for Def't.

36 UNITED STATES OF AMERICA, }
District of Colorado. }

The President of the United States of America to the marshal of the district of Colorado, Greeting:

You are hereby commanded that you summons R. S. Wilson, O. E. Le Fevre, and L. H. Eicholtz, if they be found in your district, that, setting aside all manner of excuses and delay, they personally be and appear before the Honorable *the* John W. Webster, examiner in chancery of the circuit court of the United States for the district of Colorado, at his office, in the city of Denver, in said district, on Saturday, the 2d of September, A. D. 1882, at 10 o'clock a. m., and remain thereafter to testify in the cause wherein Joseph Gottlieb is complainant and Lewis C. Thatcher is defendant, on behalf of the defendant.

And this they shall in nowise omit under penalty of the law. Hereof fail not and have you then and there this writ, with due return thereon endorsed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the [SEAL.] seal of the said circuit court, at the city of Denver, in said district, this 29th day of August, A. D. 1882, and of the Independence of the United States the 107th year.

EDWARD F. BISHOP, *Clerk*,
By WM. E. ROGERS, *Deputy Clerk*.

(Indorsed:) Circuit court of the United States for the district of Colorado. Joseph Gottlieb *vs.* Lewis C. Thatcher. Subpœna behalf of defendant. District of Colorado, *ss:* Denver, August 29th, 1882. I have duly served the within subpœna by reading the same to the within-named R. S. Wilson, O. E. Le Fevre, and L. H.
37 Eicholtz, all at Denver, Arapahoe county, Colorado, this 29th day of August, A. D. 1882, as I am therein commanded. Walter A. Smith, United States marshal, by A. C. Koogle, deputy marshal.

Fees.

Service, 3 at 50 cts.	$1 50
Mileage, going only, 2 miles at 6 cts.	12
Total	$1 62

Paid by def't.

Filed this 30th day of August, A. D. 1882.
JOHN W. WEBSTER, *Examiner*.

CHARLES & DILLON, *Attorneys for Def't.*

UNITED STATES OF AMERICA, }
District of Colorado. }

The President of the United States of America to the marshal of the district of Colorado, Greeting:

You are hereby commanded that you summon J. U. Marlow, John J. Maxey, E. G. Owens, Charles Roth, and Myers Fisher, if they be found in your district, that, setting aside all manner of excuses and delay, they personally be and appear before the Honorable John W. Webster, master of the circuit court of the United States for the district of Colorado, at his office, over the 1st Nat'l bank, in the city of Denver, in said district, on Friday, the 21st of July, A. D. 1882, at 10 o'clock a. m., and remain thereafter to testify in the cause wherein Joseph Gottlieb *as* complainant and Lewis C. Thatcher *as* defendant on behalf of the defendant.

And this they shall in nowise omit, under penalty of the law. Hereof fail not, and have you then there this writ with due return thereon endorsed.

38 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver, in
[SEAL.] said district, this 19th day of July, A. D. 1882, and of the Independence of the United States the 107th year.

EDWARD F. BISHOP, *Clerk*,
By WM. E. ROGERS, *Deputy Clerk*.

(Indorsed:) Gen. No., 228. Circuit court of the United States for the district of Colorado. Joseph Gottlieb *vs.* Lewis C. Thatcher. Subpœna behalf of defendant.

DISTRICT OF COLORADO, *ss*:

DENVER, *July 20th*, 1882.

I have duly served the within subpœna by reading the same to the within-named J. U. Marlow, E. G. Owens, and Myers Fisher, at Denver, Arapahoe county, Colo., July 19th, 1882, and to John J. Maxey, at Denver, Arapahoe county, Colo., July 20th, 1882, & advancing to him $1.50, as I am therein commanded; as to Chas. Roth, not found (gone East).

WALTER A. SMITH,
United States Marshal,
By SIM. W. CANTRIL,
Deputy Marshal.

Fees.

Service, 4 at 50 cts.	$2 00
Mileage, going only, 2 miles at 6 cts.	12
Fees advanced to John J. Maxey	1 50
Total	$3 02

Paid by Dillon.

Filed this 20th day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

CHARLES & DILLON, *Attorneys for Def't.*

NOTE BY CLERK.—In original here follow four other subpœnas for witnesses before examiner not copied.

39 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } In Chancery.

Testimony of witnesses taken in the above-entitled cause before John W. Webster, one of the examiners in chancery of said court, under the 67th rule of the Supreme Court of the United States and amendments, and also by virtue of the order of said court and direction of examiner, which are hereto attached, wherein Joseph Gottlieb is complainant and Lewis C. Thatcher is defendant, in a certain suit or matter now pending and undetermined in said court, as it appears upon bill to set aside a conveyance.

Pursuant to the direction of the examiner fixing the time and place therefor I was attended by J. A. Bentley, Esq., solicitor for complainant, and Henry C. Dillon, Esq., solicitor for defendant.

And thereupon the complainant produced G. S. Richards, deputy clerk of the district court, Arapahoe county, witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

I am deputy clerk of the county of Arapahoe district court; this book produced is a portion of the records of the district court now in the custody of the clerk of this court; this is Journal No. 12, Judgment Book No. 1, and these papers which I produce are part of the records of this court and in the custody of the clerk of this court.

G. S. RICHARDS,
Deputy Clerk.

40 Subscribed and sworn to before me this 20th day of June, A. D. 1882.

J. W. WEBSTER, *Examiner.*

The complainant's solicitor now offers in evidence the journal entry on page 105 of Journal No. 12 of the trial in the attachment case of Joseph Gottlieb *vs.* Samuel H. Thatcher, July 21st, 1877, a certified copy of which is hereto attached, marked Exhibit "A."

The same is objected to by def't's counsel as incompetent to prove any issue in this case.

Also complainant's solicitor next offers in evidence an entry of a judgment in the same case, on page 110, same book, under date of July 23d, 1877, a certified copy of which is hereto attached, marked Exhibit "B."

Objected to by def't's solicitor for the same reasons last stated.

Also complainant's solicitor offers in evidence an affidavit of the plaintiff in the above-named action, dated 25th of November, 1876, for attachment against the property of Samuel H. Thatcher, on file here with the clerk, a certified copy of which is hereto attached and marked Exhibit "C."

Objected — by def't's solicitor for the same reasons last above stated.

Complainant's solicitor now offers in evidence the writ of attachment issued in favor of the plaintiff against Samuel H. Thatcher, bearing date the 25th day of November, 1876, a certified copy of which is hereto attached and marked Exhibit "D."

Objected to by def't's solicitor for the same reasons last above stated.

41 Complainant's solicitor next offers in evidence the return to said writ, endorsed on the back by the sheriff of Arapahoe county, a certified copy of which is hereto attached, marked Exhibit E.

Objected to by def't's solicitor for the same reasons last above stated.

Complainant's solicitor next offers in evidence the declaration of the plaintiff Joseph Gottlieb *vs.* Samuel H. Thatcher, filed the 25th of Nov., 1876, together with the endorsement on the back of a copy of the note and account sued upon, a certified copy of which is hereto attached and marked Exhibit F.

Objected to by def't's solicitor for the same reasons last above stated and as immaterial.

Complainant's solicitor next offers in evidence an execution issued upon the above judgment against Samuel H. Thatcher on the 24th day of July, 1877, together with the annexed fee bill and the endorsements upon the back thereof made by the clerk and the sheriff's return to the execution, including a notice of sale of certain real estate, with proof of the publication, copies of which are hereto annexed and marked Exhibits G, G 1, G 2, & G 3.

Defendant's solicitor objects to same for the reasons last above stated.

Complainant's solicitor now produces CHARLES H. SCOTT, a witness, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

I am deputy recorder and county clerk of Arapahoe county, and books produced, No. 95 and 104, are a part of the records of the office.

CHAS. H. SCOTT.

42 Subscribed and sworn to before me this 20th day of June, A. D. 1882.

J. W. WEBSTER, *Examiner.*

Complainant's solicitor now offers in evidence the record of a certificate of sale in Book 95, page- 107 & '8, by the sheriff of Arapahoe county to Joseph Gottlieb, dated 15th day of August, 1877, a certified copy of which is hereto attached and marked Exhibit H.

Def't's solicitor objects for the same reasons last above stated.

Complainant's solicitor next offers in evidence deed of the sheriff of Arapahoe county to Joseph Gottlied in Book 104, page 43, dated July 19th, 1878, a certified copy of which is hereto attached and marked Exhibit I.

Def't's solicitor objects for same reasons last above stated.

Complainant now produces LEWIS C. THATCHER, a witness in his behalf, who, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposed and testified as follows:

Q. I am the defendant in this case; I reside in the city of Chicago, 439 West Van Buren street, and have resided there about two years. I resided before that in St. Louis, State of Missouri, about 14 or 16 years; somewhere in that neighborhood. I am superintendent of the McBurney & Johnson White Lead Company, and in St. Louis, before I went to Chicago. For the last 7 years I was superintendent of the St. Louis Lead & Oil Company.

Q. 1. Did you know Samuel H. Thatcher, lately of Denver, Colorado; and, if so, what relation was he to you?

Ans. Yes, sir; I did know him. He was my brother.

43 Q. 2. Is he living or dead; and, if dead, when did he die?

Ans. He is dead, and I believe he died about the 12th of February, 1879. I was not here when he died.

Q. 3. Are you the grantee named in a deed made by the sheriff of Arapahoe county about the 19th day of July, 1878, under a sale made upon an execution issued upon a judgment in favor of one Samuel Kaucher against Samuel H. Thatcher?

Ans. I am.

Q. 4. Were you present at the sale made by the sheriff under which that deed was given?

Ans. I was not.

Q. 5. Where were you?

Ans. In St. Louis, Missouri.

Q. 6. Before that sale was made did you forward to any person in Denver or elsewhere the money with which to purchase property which might be sold under the Kaucher judgment?

Objected to by counsel for def't as irrelevant and immaterial.

Ans. I did.

Q. 7. To whom?

Ans. To my brother, Samuel H. Thatcher.

Q. 8. How long previous to the sale did you forward the money?

Objected to by counsel for def't for the same reasons last stated.

Ans. These moneys were forwarded in the interim between the original purchase of my brother and the Kaucher judgment.

Q. 9. How much money did you forward for the purpose of making that purchase?

Objected to by counsel for def't for the reasons last stated and because not the best evidence of the amount needed.

44 Ans. To the best of my recollection, sufficient to cover the purchase.

Q. 10. I asked for the amount which you forwarded for that purpose and now repeat the inquiry.

Objected to by counsel for def't for the reasons last named and because counsel is cross-examining his own witness.

Ans. I shall have to answer, then, that I don't know, if the other answer is not sufficient.

Q. 11. How did you send the money which you did send for that purpose?

Def't's counsel objects for same reasons last above stated.

Ans. Some of the money I sent by mail and some by way of the telegraph.

Q. 12. The money which you sent by mail, was that sent by postal order?

Def't's counsel objects for same reasons last above stated.

Ans. It was not.

Q. 14. In what form was the money which you sent by mail?

Objected — by def't's counsel for same reasons last above stated.

Ans. In currency.

Q. 15. Did you send it in more than one enclosure; and, if so, in how many?

Objected to by counsel for same reasons last above stated.

Ans. I did; but I don't know just how many.

Q. 16. When did you send the first enclosure of money by mail for the purpose of making that purchase?

Objected to by counsel of def't for same reasons last above stated.

Ans. Well, I can't just tell the date when these remittances began.

45 Q. 17. State about how long after Samuel H. Thatcher's deed to you it was before you sent the first enclosure of money to be used at the sale under the Kaucher judgment.

Objected to by counsel for def't for the same reasons last above stated.

Ans. Well, I don't know.

Q. 18. How much money did you enclose for that purpose in the first enclosure?

Objected to by counsel for def't for same reasons last above stated.

Ans. I have no recollection now of the amount.

Q. 19. Have you with you in Denver or elsewhere—and, if so, where—any memoranda by which you can state the total amount of money forwarded by you to your brother for the purchase of property which might be sold under the Kaucher judgment or the separate amounts forwarded to him for that purpose or the date or dates respectively when the several amounts were forwarded?

Def't's counsel objects for same reasons last above stated.

Ans. I had in my possession some of these papers, but in 1880, when I was here, I left all of these memorandas that was then in my possession with Messrs. Charles & Dillon, to the best of my recollection.

Q. 20. You do not answer specifically whether you have or had memoranda which would show the amount or amounts forwarded. Please state whether the memoranda referred to in your last answer did show the matters enquired after in the last question.

Objected to by def't's counsel for the same reason last above stated and because the memoranda are the best evidence of the fact.

Ans. The memoranda that I speak of would not show fully
46 the whole amounts of money or moneys that I had forwarded to my brother.

Q. 21. In forwarding moneys by mail to Samuel H. Thatcher to be used in purchasing property which might be sold under the Kaucher judgment, did you send any of the enclosures by registered letter?

Def't's counsel objects for same reasons last above stated.

Ans. None.

Q. 22. State, if you can, approximately how long it was before the sale under the Kaucher judgment that you sent the last enclosure of money by mail to Samuel H. Thatcher to be used at said sale.

Def't's counsel objects for same reasons last above stated.

Ans. I don't know when.

Q. 23. Do you remember having executed a power of attorney to Samuel H. Thatcher authorizing him to sell or exchange lands in your name and on your behalf?

Def't's counsel objects for reasons last aforesaid, and because the instrument is the best evidence of what it authorizes.

Ans. I have no recollection of an instrument reading just like that—for the exchange of lands, I mean—but I do remember of giving him, I think, a full power of attorney. That is my recollection of it now.

Q. 24. Now, in reference to the making of that power of attorney, please state whether the remittances of money by mail to Samuel H. Thatcher were before, at the time of, or subsequent to the execution of that power.

Def't's counsel objects for same reason last above stated.

Ans. I don't know.

Q. 24. How many remittances of money did you make by telegraph to Samuel H. Thatcher to be used in purchasing property under the Kaucher judgment?

47 Def't's counsel objects for same reasons last above stated.

Ans. I can't say that any of the remittances was for that specific purpose; there was two of them, I believe, but now don't remember the amounts.

Q. 25. Can you state the dates of the telegraphic remittances, whether before, at the time of, or subsequent to the execution of the power of attorney before referred to in the preceeding questions and answers?

Def't's counsel object- for same reasons last above stated.

Ans. I cannot.

Q. 26. At what place and to what company did you deliver the telegraphic remittances and to whom were they addressed?

Def't's counsel objects for the same reasons last above stated.

Ans. From—the place was St. Louis, and it was addressed to Samuel H. Thatcher. I don't know what telegraph company it went by. If by the Western Union Company, it was delivered at Third and Olive streets.

Q. 27. After forwarding the enclosures of money by mail and the transmittals by telegraph, did you or did you not receive information whether they had been received by the person to whom they were sent?

Def't's counsel objects for same reasons last above stated.

Ans. To the best of my recollection, my brother never said anything to me about the money he received by telegraph; on the other occasions he did.

Q. 28. How did he acknowledge the receipt of the mail enclosures, verbally or by letter?

Def't's counsel objects for same reasons last above stated.

Ans. By letter.

48 Q. 29. In what form, I mean, whether written or verbal, was Samuel H. Thatcher's authority to purchase in your name property which might be sold under the Kaucher judgment?

Def't's counsel objects for same reasons last above stated.

Ans. Written.

Q. 30. Was it a letter or a regularly executed power of attorney?

Def't's counsel object- for same reasons last above stated.

Ans. A letter.

Q. 31. Have you either a copy or the original of that letter?

Def't's counsel objects for same reasons as before.

Ans. I have not the original letter and I never copied a letter in my life of no kind.

Q. 32. With reference to the power of attorney already mentioned, was your letter of authority written before, at the time of, or subsequent to the execution of that power of attorney?

Def't's counsel objects for same reasons as before stated.

Ans. It was since that.

Q. 33. State, if you know, the precise date of that letter. If you cannot state precisely, then its approximate date.

Def't's counsel objects for same reasons last above stated.

Ans. I cannot state precisely the date and I don't know that I could approximate, even.

Q. 34. When did you first hear and from whom that there was likely to be a sale under the Kaucher judgment?

Ans. From my brother. I can't state the time.

Q. 35. Verbally or by letter?

Ans. By letter.

Q. 36. Have you that letter?

Ans. No, sir.

Q. 37. Where is it?

49 Ans. It is lost or destroyed; I had made no case of any of his letters.

Q. 38. Referring to the letter of authority which you wrote your brother to purchase property at the Kaucher sale, did you receive the letter from your brother notifying you of the probability of the sale before or about the time of or subsequent to the letter of authority?

Def't's counsel objects for the same reasons as last above stated.

Ans. Well, that I don't know; it was a good while ago.

Q. 39. Was or was not your letter of authority to your brother, referred to in the preceding questions and answers, written in response to a letter received from him or from some other person notifying you of a probability of a sale of property under the Kaucher judgment?

Ans. The suggestions of the letter came from my brother.

Q. 40. Was or was not his suggestion contained in the letter notifying you of the probability of a sale under the Kaucher judgment?

Ans. That I don't know.

Q. 41. Have you the letter which contains that suggestion; and, if not, what has become of it?

Ans. I have not got it; it is destroyed.

Q. 42. Do you know whether or not the power of attorney to Samuel H. Thatcher, to which you have referred, has been made a matter of record in the recorder's office of Arapahoe county?

Def't's counsel objects as being immaterial because the records are the best evidence.

Ans. I don't know.

Q. 43. Have you within the last 5 years executed more
50 than one power of attorney to Samuel H. Thatcher, authorizing him to sell or deal in lands in your name in the State of Colorado?

Ans. I have no recollection of ever executing but one.

Q. 44. Did you not forward all the enclosures of money by mail to which you have referred, previous to the execution of that power of attorney?

Def't's counsel objects as being leading and immaterial.

Ans. That I don't know.

Q. 45. Did you forward any of those money enclosures by mail previous to the execution of the power of attorney?

Def't's counsel objects for same reasons last above stated.

Ans. I don't know.

Q. 46. Do you remember of having made any of those remittances by mail after the date of that power of attorney; and, if so, how many of them, and how long approximately after its date?

Def't's counsel objects for same reasons last above stated, and because improper to cross-examine his own witness.

Ans. I don't know; I don't remember.

By stipulation of counsel the further taking of testimony is hereby continued until Wednesday, the 21st day of June, 1882, at the hour of 9½ o'clock a. m.

J. W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this Wednesday, the 21st day of June, 1882, at the hour of 9½ o'clock a. m., LEWIS C. THATCHER, in continuation of his testimony begun on yesterday, deposed and testified as follows:

Q. 47. I asked for information yesterday in relation to the amounts of money which you had forwarded to Mr. Thatcher
51 in mail enclosures, and you were unable to give them. I repeat the question this morning as to those amounts.

Def't's counsel objects for the reasons last aforesaid and because improper to thus cross-examine his own witness.

Ans. I understood the question yesterday for me to give the amounts and the times these remittances were made. That I could not do. I can produce a voucher for nearly $4,000 *dollars* of moneys that I sent him.

Pl'ff's counsel objects to the answer as not being responsive.

Q. 48. How many times did you forward money to your brother between the date of his deed to you of the property in controversy and the time of the execution sale under the Kacher judgment, whether by mail, in currency, by draft or postal order, or by telegraph or express? I ask for the total number of times.

Def't's counsel objects for same reasons last above stated.

Ans. I can't give the total number of times; it is an utter impossibility.

Q. 49. Do you remember that you sent money to him in any of these ways or through any other medium at any time between the dates stated; and, if so, how many times are you able now to recall to mind?

Def't's counsel objects for same reasons last above stated.

Ans. I have remitted him money by the United States mail; I don't remember the number of times, but I do remember one or more times of remitting him money by way of the telegraph.

Q. 50. Do you remember of any one time of remitting money by mail?

Def't's counsel objects for same reasons last above stated.

Ans. I do.

Q. 51. How many times now do you recall as clearly as
52 you do the one you refer to?

Def't's counsel objects for same reasons last above stated.

Ans. I only know from a general transaction of the business that there was one and more.

Compl't's counsel objects to answer as not being responsive to the question.

Q. 52. Can you give approximately or exactly the date of the remittance which you say you recollect that you made by mail?

Def't's counsel objects for same reasons last above stated.

Ans. I cannot, but if permitted to refer to my papers I would be able to approximate the times of some of these remittances.

Q. 53. Was the remittance which you recollect that you made by mail the first one that you did make or the last one?

Def't's counsel objects for same reasons last above stated.

Ans. I don't know.

Q. 54. How many several remittances by mail do you remember to have made?

Def't's counsel objects for same reason last above stated.

Ans. One and more.

Q. 55. How many more? Do you remember?

Def't's counsel objects for same reasons last above stated.

Ans. My answer can be only made up from the nature of the

business—the manner in which the remittances were made. I would be unable to give the number of remittances.

Q. 56. I didn't ask you for the number of remittances, more than one which you made, but the number which you made more than one which you remember you did make.

Def't's counsel objects for same reasons last above stated.

Ans. Well, I can safely say there were at least four more which I remember.

53 Q. 57. About how much space of time was included between the first remittance which you remember and the last of the five remittances?

Def't's counsel objects for same reasons last above stated.

Ans. I don't remember.

Q. 58. During the period between the date of your brother's deed to you and the sale under the Kaucher judgment did you furnish or forward to him any money other than the mail enclosures of currency and the telegraphic remittances?

Def't's — object for same reasons last above stated.

Ans. I don't remember that I ever made any other remittances except those enumerated, by mail and by telegraph. I am not sure that the remittances by telegraph were made between those times.

Q. 59. In answer to question 24, speaking of the purpose of the telegraphic remittances, you said "you could not say that any remittances were for that specific purpose," referring to the sale under the Kaucher judgment. Now, explain your last and this one in order, that they may not be misunderstood.

Def't's counsel objects for the same reasons last above stated.

Ans. If my memory serves me correctly, that the remittance by telegraph was just about the time of this sale, but don't know to a certainty just which side it was on, whether before or after. It may have been just before or just after; I don't know which

Q. 60. Please state the total amount of money which you forwarded to your brother in any way between the dates before referred to and including the telegraphic remittances as near as you can remember the amount.

Ans. I think the total amount of remittances, including by

54 mail and telegraph, between the time of the sale of the property to me by my brother and the purchase of the property under the sale by virtue of the execution in the Kaucher judgment would exceed four thousand ($4,000.00) dollars.

Q. 61. What was the amount of your annual net income during the last seven years you were in St. Louis?

Ans. From three to five thousand dollars per annum, at least.

Q. 62. You had a family in St. Louis?

Ans. I had.

Q. 63. About what proportion of your income arose from your personal services as superintendent or otherwise?

Ans. From three to five thousand dollars per annum.

Q. 64. Referring to question 57 and the answer, you say that you do not remember how much time intervened between your first and last remittance. State, as nearly as you can remember or estimate, about how much time intervened between the several remittances.

Def't's counsel objects for reasons last above stated.

Ans. I don't remember.

Q. 65. State the time, as nearly as you can calculate it, when you first heard of the Kaucher judgment.

Def't's counsel objects for the same reasons last stated.

Ans. I expect I was informed of it about the time that it was rendered.

Q. 66. You are the grantee named in a deed made by Samuel H. Thatcher having date about the 13th day of November, 1876, of the premises that are the subject of controversy in this suit?

Ans. I am.

Q. 67. Have you the deed?

Ans. I have not.

Q. 68. Did you ever have it in your possession?

55 Ans. I have had; yes, sir.

Q. 69. When did it first come to your possession?

Ans. I think somewhere near the 13th day of November, 1876.

Q. 70. When were you when it first came to your hand?

Ans. I was at the St. Louis Lead & Oil Company's factory, St. Louis, Missouri.

Q. 71. Had the deed then been recorded?

Ans. It occurs to me now that it was not.

Q. 72. Upon the receipt of the deed, what did you do with it?

Ans. My recollection of it now is that I sent it to be recorded.

Q. 73. How do you remember that you sent it for record?

Ans. I think now I sent it to Ham. Hunt, an attorney-at-law.

Q. 74. Where was he, and how did you send it to him?

Ans. He was here in Denver, but I don't know just how I sent it. I believe I sent it through the mail.

Q. 75. How did the deed come to your hands, through the mail or otherwise?

Ans. I believe it came through the mail, but I am not sure about it.

Q. 76. Was it enclosed in an envelope?

Ans. Yes, sir; I believe it had an envelope around it.

Q. 77. Was it accompanied by a letter, either in the same envelope or a letter received about the same time relating to it?

Ans. I don't think there was any letter accompanying the deed, and I have no recollection of receiving any letters referring to it; not immediately, at any rate.

Q. 78. Had there been previous to your receiving the deed any notice given you that you was to receive the deed, either by letter or otherwise; and, if so, by whom was the notice given?

56 Ans. After it was understood and the terms agreed upon for the purchase of the property I was apprised that the deeds would be sent to me.

Compl't's counsel objects to all of the answer down to "I was apprised, &c.," as not responsive to the inquiry and as volunteered testimony.

Q. 79. By whom were you apprised that the deed was to be sent to *to* you?

Ans. H. R. Hunt (Hamilton R. Hunt).

Q. 80. Was Mr. Hunt an attorney-at-law at Denver, and was he the attorney of your brother?

Ans. I have always been under that impression.

Q. 81. Was his notification that the deed would be sent by letter or in writing?

Ans. It was by letter that I was apprised of it.

Q. 82. Where is that letter?

Ans. I don't know.

Q. 83. What did you do with the letter, and where was it when you last saw it?

Ans. I last saw the letter in St. Louis, but believe it has been destroyed.

Q. 84. How long previous to the receipt of the deed did you receive the letter?

Ans. Not many days before; I don't know just how many.

Q. 85. Previous to the receipt of that letter, did you receive any other communication from Mr. Hunt relating to the property in controversy?

Ans. I did.

Q. 86. How long before?

Ans. It might have been a day or two.

57 Q. 87. Preceding the letter last spoken of, did you receive any other letter from Mr. Hunt relating to the property?

Ans. I don't remember that I did.

Q. 88. Where is the last letter spoken of?

Ans. I don't know; it is destroyed.

Q. 89. How did you pay the consideration named in the deed?

Ans. I gave my notes.

Q. 90. In relation to your receipt of the deed when did you give your notes—before, at the time of, or subsequent to the receipt of the deed?

Ans. My recollection of it now is that I gave the notes before I got the deed; still it might have been the reverse.

Q. 91. Who first proposed the sale of these lands to you?

Ans. My brother.

Q. 92. How long previous to your receipt of the deed?

Ans. Perhaps a month.

Q. 93. By letter?

Ans. It was by letter.

Q. 94. Where is that letter?

Ans. That is destroyed.

Q. 95. Have you at your command any means by which you can fix the date of that proposal, or can you recall any other circumstance which you can connect with it and fix more certainly upon the date that it was made?

Ans. None at my command now that I know of.

Q. 96. Can you approximate the length of time which elapsed between receiving his proposition and the receipt of the first letter from Hunt?

Ans. There was several days elapsed from the time I first received the proposition from my brother, but I cannot tell how many. It might have been two weeks.

58 Q. 97. When did you first visit Denver and its vicinity?

Ans. On or about the 12th of February, A. D. 1879, I believe it was.

Q. 98. Has it been any portion of your business to deal in real estate?

Ans. I have dealt some in real estate.

Compl'-'s counsel objects to the answer as not responsive.

Q. 99. At the time your brother made this deed were you dealing in real estate as a part of your business?

Ans. The question implies that I was.

Q. 100. At that time did you own other real estate in the State *State* of Colorado?

Def't's counsel objects, because it is irrelevant and immaterial.

Ans. I did.

Q. 101. What other and where?

Def't's counsel objects for the reasons last stated.

Ans. In Elbert county, and I owned a piece in Douglas county, I think.

Q. 102. Who conveyed the property in Elbert and Douglas counties to you?

Def't's counsel objects for reasons last stated.

Ans. My brother.

Q. 103. Had the deeds of the property in Douglas and Elbert counties already been delivered to you before you received the deed of the property in controversy?

Def't's counsel objects for same — last stated.

Ans. No, sir.

Q. 104. How long after this deed was received before you received the others?

59 Def't's counsel objects for same reasons last stated.

Ans. A short time. I don't know just how long.

By stipulation of counsel continued until Thursday, the 22nd day of June, A. D. 1882, at 10 o'clock a. m.

J. W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Thursday, the 22nd day of June, A. D. 1882, at the hour of ten o'clock a. m., LEWIS C. THATCHER, in continuation of his testimony from yesterday, deposed and testified as follows:

Cross-examination:

Q. 1. In answer to direct interrogatory No. 47 you say, "I can produce a voucher for nearly four thousand dollars of moneys that I sent them." Please produce that voucher.

Compl't's counsel objects to it, because it calls for new matter and is not proper cross-examination.

Ans. Witness here produces a paper.

Q. 2. Please hand that paper to the examiner and have it marked for identification as an exhibit.

Compl't- counsel object that it cannot be marked as an exhibit until it is introduced in evidence.

Ans. Witness hands paper to examiner, which is marked for identification as Exhibit 1.

Q. 3. I now offer in evidence, as a part of this evidence, this paper marked as Exhibit 1, which is hereto attached as a part of the evidence herein.

To which the compl't's counsel object, because it is new matter and not proper cross-examination and not the best evidence
60 of the facts contained in it and incompetent.

Q. 4. You have said in answer to direct interrogatories that you remitted that money to your brother in various sums by mail and otherwise. Please explain why you adopted that method of remittance.

Compl't's counsel object that the question improperly assumes that the receipt, Exhibit 1, relates to and covers the money remitted in the mail enclosures, and because it asks a reasons for the conduct of the witness and not for facts that may be proved or disproved.

Ans. The reason why these remittances by mail were made at various and sundry times in small sums of money by mail was because that it has always been my practice, with a few exceptions only, to transmit money by the mails; that I never, out of many thousands of dollars sent that way, lost but twenty dollars.

Compl't's counsel objects to the answer and each paragraph that it is not responsive to the question and is volunteer testimony.

(And counsel for the comp'ts calls the attention of the examiner to the fact that the witness offered an additional reason in response to the last question and requests that it be recorded.)

Request withdrawn. J. W. Webster, examiner.

The last request is withdrawn by counsel for compl'ts upon a further understanding of what the witness intended.

Q. 5. With reference to that power of attorney which you say in answer to direct interrogatory 23 you gave your brother, have you been able since that answer by examination or inquiry to find out whether or not it has ever been recorded in Arapahoe county?

Ans. Through my attorneys I have had furnished me an abstract, and no mention has been made in the abstract of there ever having been recorded any power of attorney.

Q. 6. Where is that power of attorney?

61 & 62 Ans. I don't know.

Q. 7. Has it ever been in your possession since you sent it to your brother?

Ans. Never that I know of.

Q. 8. Please state, as nearly as you can, the purport and contents of that power of attorney.

Compl't's counsel objects because it is not proper cross-examination and not the best evidence, no proper foundation having been laid for it.

Ans. To the best of my recollection now, that power of attorney was given to my brother to sell some timber on some other lands of mine outside of Arapahoe county and in the State of Colorado, authorizing him to sell and collect the moneys.

Q. 9. What do you understand by your expression "full power of attorney" in your answer to interrogatory 23?

Ans. I understand a full power to mean to give all the rights and privileges to act in my behalf in everything that is expressed in the instrument.

Q. 10. Did your brother ever act in your behalf under that power of attorney in any other matter than the sale of that timber?

Counsel for compl't objects, 1st, because the question assumes for a fact what has not been proved; 2nd, it is not proper matter of cross-examination; 3d, it is immaterial.

Ans. None that I know of.

Q. 11. You have stated in your direct examination that certain letters received by you from your brother and Hamilton R. Hunt referring to the Kaucher judgment and to your purchase of the property in dispute in this case are destroyed. Please explain

63 how they came to be destroyed and when.

Ans. It never has been my practice to preserve all my correspondence, file them away, or undertake to take any kind of care of them. It has been my practice from time to time to look over old letters and papers that I might have and when, in my opinion only, I would conclude that there was no further need of their preservation I burnt them. I don't know when it was.

Q. 12. Were they destroyed before or after this suit began?

A. I regret exceedingly to say that it was before.

Q. 13. With reference to your income inquired about in interrogatory 60, what was the nature of your business from February, 1872, to June, 1879?

Compl't's counsel objects because it is immaterial and irrelevant and not proper cross-examination.

Ans. I was engaged by and in the employ of the St. Louis Lead and Oil Company, located in St. Louis, Missouri, in various capacities—as foreman, superintendent, and contractor.

Q. 14. During that time what was the extent of your business—that is to say, the amount of money you were handling, your total receipts in that business?

Ans. The total receipts during that time, from the 1st of February, 1872, until I severed my relations with that company, to the best of my knowledge and belief, amounted to seventy-five thousand dollars or thereabouts.

Q. 15. In answer to interrogatory 65 you say you think you were informed of the Kaucher judgment when it was rendered. From whom did you receive that information?

Ans. From my brother.

Q. 15. What was that information?

64 Compl't's counsel objects because not proper cross examination and calls for matter which is in writing and cannot be proved by parol.

Ans. In a letter I received from my brother about that time he casually mentioned in his letter that he had recently had decided against him a very important suit which had been pending in the supreme court in the then Territory of Colorado, but had taken an appeal to the Supreme Court of the United States. This suit was known *or* a suit of Kaucher *vs.* Thatcher.

Q. 17. What further correspondence, if any, did you have with your brother or any other person about that judgment at the time you purchased the property in controversy?

Compl't's counsel objects because it is not proper cross-examination; it seeks to prove by parol what is in writing and is incompetent and immaterial.

Ans. I believe the first question in relation to the Kaucher judgment made by me in relation to the purchase of the lands was to ask if the property was free and clear and unincumbered, and I was assured that it was. I then asked my brother or Hamilton R. Hunt, I won't be sure which, what had become of the Kaucher judgment. I was told that it had not yet been decided, and that should the judgment go against them that the judgment would not be a lien upon the property, but, should it prove to the contrary, that the judgment would be a lien upon the property; that some provision would be made for my protection against loss.

Q. 18 What has become of the letters which gave you that information?

Ans. They are destroyed.

Q 19. Were they among the letters which you say were destroyed in answer to a previous interrogatory?

Ans. Yes, sir.

65 Q. 20. Upon receiving that information what action did you take with reference to that Kaucher judgment?

Complainant's counsel objects as not proper cross-examination and is incompetent.

Ans. I suggested to my brother the propriety of taking some necessary steps to meet it in the event should judgment be rendered against him and if it proved to be a lien against the property, and I further said to him that I would send him the money from time to time and for him to preserve it and have it in readiness to meet the Kaucher judgment, and in the event that the Kaucher judgment was not a lien upon the property that the money should be used for the payment of two notes that he held against me for the original purchase of the property now in controversy.

Q. 21. How much money did you send pursuant to that arrangement?

Comp't's counsel objects as not proper cross-examination.

Ans. About four thousand dollars.

Q. 22. Is that the same money mentioned by you in your direct examination as having *by* sent by you by mail for that purpose?

Ans. Yes, sir; it was.

Q. 23. Was that money applied in the manner provided by you and your brother in that arrangement? State, if you know, how it was applied.

Compl't's counsel objects—1st, as not proper cross-examination; 2nd, calls for hearsay and asks the witness for matter which he has already shown that he is incompetent to speak of.

Ans. To the best of my knowledge, it was applied in accordance with my instructions above mentioned.

66 Q. 24. In case that money was applied upon the Kaucher judgment in any way, what was the agreement as to what should be done with the notes?

Compl't's counsel objects as not cross-examination and leading and calls for the contents of a written paper by parole.

Ans. Whatever portion of the money I sent him that was used to satisfy the Kaucher judgment was to be endorsed on my notes and they sent to me.

Q. 25. Were they sent to you or how did they come into your possession, if at all?

Comp't's counsel objects as not proper cross-examination, calls for hearsay, and is incompetent.

Ans. One of my notes was sent to me—the one due, I believe, in 1878.

Q. 26. The other note was not sent to me because my brother then had, to the best of my information, borrowed money and placed this note as collateral security. He said, however, that he would take care of it and send it to me, but before he could meet

this obligation made to me he unfortunately died, and since his death I have found the note in the hands of another man—in the hands of A. Jacobs & Co, Colorado—with a portion of this obligation just spoken of partially met, and I paid the remainder and I have now in my possession this note.

Compl'ts' counsel objects to all of the answer except the first clause, and because it is not responsive to the interrogatory, and volunteer testimony.

Q. 27. What information or knowledge had you of the value of this real estate in controversy at the time you bought it of your brother?

Ans. I received my information of the value of the prop-
67 erty from Mr. Hunt and my brother, and in connection with that I knew that Denver was a growing place, Colorado herself full of mineral, and Denver could not help but become in the near future a thriving city. I have been for several years a subscriber for one or the other of the best newspapers published in this city, and from them I learned some of the prospects of this country and from maps of State was satisfied from its geographical position that it must become the principal city in this Territory in the near future.

Compl't's counsel objects because the answer is not responsive, and that witnesse's conclusions are immaterial and incompetent.

Q. 28. To whom were the Douglas and Elbert county deeds referred to by you in your direct examination delivered in the first instance by your brother?

Ans. To Mr. Hunt.

Q. 29. Who requested your brother to deliver those deeds to Mr. Hunt?

Ans. I did.

Q. 30. After you purchased the property in question from your brother what interest or estate, if any, did he continue to have in it?

Compl't's counsel objects on the ground that it is not proper cross-examination. It asks for a conclusion of law, and is not the best evidence.

Ans. None that I know of.

Q. 31. Did you ever promise or give your brother to understand at the time of making the deed to the property in question or before or since that you would, upon any contingency, deed any portion of it back to him or share any portion of the proceeds thereof with him?

68 Compl't's counsel objects that it is not proper cross-examination and incompetent.

Ans. None of no kind nor character.

Q. 32. Was there any understanding or agreement between you and your brother at any time that the promissory notes or either of them mentioned by you in your direct examination or given in con-

sideration for the conveyance of the property in question were not to be paid?

Compl't's counsel object for reasons last above stated; also that it is leading and immaterial.

Ans. None whatever.

Redirect examination:

Q. 1. In answer to the 16th cross-interrogatory you state that in a letter received from your brother about this time "he casually mentioned that he had recently had decided against him a very important suit, &c." Now when, with reference to the time of the deed of the property in controversy to you, was that letter received?

Ans. Well, that was shortly after the decision by the supreme court of Colorado.

Q. 2. Your answer is not sufficiently definite. Was it before or subsequent to the deed, and about how long before or subsequent?

Ans. It was before, and I don't think it could have been less than eighteen months.

Q. 3. In answer to cross-interrogatory 17 you state "that the first question in relation to the Kaucher judgment made by you was to ask if the property were free and clear and unincumbered and that you were assured that it was," and that you asked your brother or Hunt what had become of the Kaucher judgment. Were those enquiries made by you previous or subsequent to the deed of
69 the property in controversy?

Ans. My impression is that it was a matter of talk before the purchase—I mean it was matter of correspondence.

Q. 4. You also say, in answer to the same question, that you were informed, in answer to those inquiries, "that should the Kacher judgment be a lien upon the property, that some provision would be made for your protection." Was that information before or after the deed?

Ans. Before.

Q. 5. In answer to cross-interrogatory 20 you say that you suggested the propriety of taking some steps to meet it in the event that judgment should — rendered against him. Was that suggestion made by you before or after the deed?

Ans. Since.

Q. 6. How long after the deed? And, as near as you can remember, fix the date.

Ans. I don't know that I could fix the time, but not a great while after.

Q. 7. Can you not approximate by stating whether it was within one month or in four or five months or more?

Ans. I think it was within the first two or three months.

Q. 8. In answer to cross-interrogatory 21 you say "that pursuant to an arrangement mentioned in your answer to interrogatory 20 you sent about four thousand dollars." In relation to the time of that arrangement about how long was it before you sent the first money?

and

Counsel for def'ts objects as not being proper redirect examination and as going back to his examination-in-chief.

Ans. It was not many days until I commenced it.

70 Q. 9. In answer to cross-interrogatory 24 you say "that whatever portion of the money that you sent him was used to satisfy the Kaucher judgment was to be endorsed on your notes and they sent to you." When was that understanding in relation to the time mentioned in your last answer?

Ans. That understanding was at the same time.

Q. 10. Was that understanding, together with the suggestion referred to in the answer to cross-interrogatory 20, contained in correspondence between yourself and your brother or between yourself and his attorney, Hunt, or was it contained in correspondence between yourself and both your brother and Hunt?

Ans. My recollection of it is now that it was purely a suggestion by me to my brother.

Q. 11. In answer to cross-interrogatory 28 you say the deeds of land in Douglas and Elbert counties were delivered by your brother in the first instance to Mr. Hunt. Was the deed of the premises in controversy here also delivered to Mr. Hunt in the first instance?

Counsel for def't objects as not being proper re-examination.

Ans. It occurs to me that I received it from Mr. Hunt.

LEWIS C. THATCHER.

Subscribed and sworn to before me this 22nd day of June, A. D. 1882.

J. W. WEBSTER, *Examiner.*

Complainant also produces JOSEPH GOTTLIEB, a witness on his behalf, who, being first duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth in relation

71 to the matters in controversy, deposed and testified as follows:

Q. 1. Are you the complainant in this action?

Ans. I am.

Q. 2. Do you know the defendant?

Ans. I do.

Q. 3. How long have you known him?

Ans. About three years.

Q. 4. Did you know Samuel H. Thatcher; and, if so, how long did you know him?

Ans. I knew Samuel H. Thatcher and have known for about 7 or 8 years and maybe more.

Q. 5. Do you remember the circumstance of a sheriff's sale under a judgment in favor of Samuel Kaucher against Samuel H. Thatcher?

Ans. I do.

Q. 6. Were you present at that sale?

Ans. I was.

Q. 7. Where did that sale take place? And give the names of such persons as you remember who were present; and if there were persons there you did not know and cannot name, state, or as nearly as you can remember, the number of such persons.

Counsel for def't objects as incompetent to prove any issue in this case and immaterial.

Ans. The sale took place at the front door of the court-house on Lawrence—corner of 15th & Lawrence, upstairs in the hall. There was present William Smith, deputy sheriff; Samuel H. Thatcher, and Mr. O. E. Le Fevre, attorney, and myself and Col. E. P. Jacobson, and there was one or two strangers whom I did not know and do not know them to-day.

Q. 8. Did Samuel H. Thatcher take an active part at the sale? And, if so, state what he did.

72 Counsel for def'ts objects because immaterial and incompetent and leading.

Ans. He did take an active part in it and appeared to be manœuvering the sale—that is, he gave a bid on the piece of property as it sold in separate parcels, then he would talk to a stranger who was present and the stranger would put in a nominal bid above his, and then Sam. Thatcher would put in a bid and then it was sold to him. He figured around so that the property would bring the amount of the judgment.

Def't's counsel moves to strike out all of comp't's answer as not responsive to the question and because it gives the conclusions and opinions of witness instead of facts inquired about.

Q. 9. What was the character of the property sold at that sale and bid off by Samuel H. Thatcher—personal property or real estate?

Counsel for def'ts objects as immaterial.

Ans. It was all real estate, one house and lot in the city of Denver and one other lot in the city of Denver and a number of acres of land in Arapahoe county.

Q. 10. Are you the grantee named in a deed of the sheriff of Arapahoe county, made in pursuance of an execution sale under a judgment in favor of yourself against Samuel H. Thatcher, which deed is dated about the 19th day of July, A. D. 1878?

Ans. I am.

Q. 11. Was the property sold at the execution sale under the Kaucher judgment the same property as described in the sheriff's deed to you?

Counsel for def'ts objects because immaterial and not the best evidence.

73 Ans. It was.

Q. 12. Who had charge of the property described in your deed situated in the city of Denver in November, 1876?

Ans. Samuel Thatcher, I suppose. and

Q. 13. How long did he continue in charge of the property in Denver?

Ans. Until I took charge of it.

Q. 14. When did you take charge of it?

Ans. A little after I got the deed from the sheriff.

Q. 15. How long did you continue in charge of it?

Ans. About 8 or 10 months.

Q. 16. State what then occurred in relation to the possession of the Denver property.

Counsel for def'ts objects as incompetent and calling for matters of record.

Ans. My tenant moved out one day and he left the key of the house, as per agreement, with a neighbor. I came up to get the key and got it, and — I came to the house I found Sam. Thatcher in there. I asked him how he got in there and he said he got in through the window, and that he came in to take possession, as it was his property. I told him *him* it was not so and requested him to leave the premises. He refused to do so. He then requested me to leave the property, claiming that it was his. We parleyed there quite awhile and I finally left, and the next day I found that he put a man in there with a mattress and pillows to stay there and hold possession.

Counsel for def'ts withdraws his objection to the last question, but objects to the answer as imcompetent and immaterial.

Q. 17. Did you ever have since that time any conversation with Lewis C. Thatcher, the defendant, in relation to the property
74 described in the sheriff's deed to you; and, if so, when and where?

Ans. I have had conversations with Lewis C. Thatcher at different times about this property. The first conversation was in the American house, in Denver; I think a few days after Sam. Thatcher was buried; the others followed that.

Q. 18. Were the others at the same visit of Lewis C. Thatcher to Denver?

Ans. Some of them were.

Q. 19. And the others?

Ans. The others were in St. Louis.

Q. 20. State the conversation between yourself and Lewis C. Thatcher in relation to these lands which you had at the American house, in Denver.

Ans. As near as I can remember, I went out to see Mr. Thatcher — introduce myself to him, and we got into conversation about this property and about the lawsuits of this property. I counseled him to be careful of the class of men who were then surrounding his brother about the time he died and counseled that we ought not to go ahead with the lawsuit; that I was perfectly willing to leave the controversy to any three respectable business men of Denver, and whatever they decided shall be a final decision. He then said he *then said* that he didn't come to Denver to get any property — as

to gobble any money; that he don't know nothing about the property; that his brother and Hunt wrote him letters and advised him to buy such property as they described to him and forward notes for the same, and he simply done as they advised him to; that he didn't care anything for property nor money nor valuables; that he simply came as a brother to bury his brother.

Def't's counsel here moves to strike out all of the above
75 answer for the reason that the conversation appears to have been brought about by the complainant's suggesting a compromise, as immaterial and irrelevant.

Cross-examination:

Q. 1. How long have you lived in Denver?

Ans. Since the spring of 1867.

Q. 2. When did you first become acquainted with Samuel H. Thatcher?

Ans. Oh, some time after I came here. I couldn't tell exactly when it was.

Q. 3. Give the year, as near as you can from the circumstances of dealing with him, when you first meet him.

Ans. I don't recollect. I had dealings with him by loaning him money, but I can't recall any particular circumstance to fix a date by. I had dealings with him for years.

Q. 4. When did you have the transaction with him which finally resulted in the judgment referred to in your answer in direct examination?

Ans. That transaction commenced two or three years before I got the judgment.

Q. 5. In what business were you then engaged?

Ans. Merchandising and loaning money.

Q. 6. Were you not at the time of that transaction, and for a long time before and since, doing business in this city as a licensed pawnbroker?

Ans. I was.

Q. 7. Where did you come from when you moved to Denver?

Ans. Leavenworth, Kansas.

Q. 8. Were you not also a pawnbroker there?

Ans. I was not.

Q. 9. Where did you live before going to Leavenworth?

76 Ans. Lawrence, Kansas.

Q. 10. How long have you lived in the United States?

Ans. About 25 years.

Q. 11. What was the transaction between you and Samuel H. Thatcher which culminated in that judgment in your favor?

Counsel for compl't objects that it is not cross-examination; that it calls for matter which is matter of record and incompetent and immaterial.

Ans. I held an note which was signed by Zell Glenmore and

Samuel H. Thatcher for an amount of money. I sued Sam. Thatcher on that note and got judgment.

Q. 12. What was the amount and date of the note?

Compl't's counsel objects for the same reason last stated and because it calls for parol evidence of the contents of a written agreement.

Ans. I don't remember.

Q. 13. Was it the same note now filed in the attachment suit of Gottlieb against Thatcher already referred to in this testimony?

Comp't's counsel objects for the same reasons last stated, and that the witness cannot be called upon to identify a paper which is not produced.

It assumes that a note has been referred to and that an attachment suit has been referred to, contrary to the facts.

Ans. I don't know what paper is referred to.

Q. 14. Was that judgment in your favor founded upon more than one promissory note?

Counsel object because not cross-examination, calls for facts which are matter of record, incompetent, and immaterial.

77 Ans. I don't know.

Q. 15. Was the note or notes upon which you recovered that judgment secured at any time by mortgage or otherwise?

Counsel objects that it is not proper cross-examination. It calls for parol evidence of the contents of written instrument as a public record of the same and is incompetent and immaterial.

Ans. It was by chattel mortgage and trust deed.

Q. 16. ——.

—. ——.

Q. 17. One or more than one chattel mortgage?

Counsel objects for same reasons last stated.

Ans. I think there was only one.

Q. 18. By one or more than one trust deed?

Counsel objects for same reasons last stated.

Ans. One trust deed.

Q. 19. If those instruments ever were made matter of record, in what county were they recorded?

Counsel objects; not cross-examination, incompetent, and immaterial.

Ans. The chattel mortgage was recorded in Arapahoe county, and the trust deed was also recorded in Arapahoe county by an error and afterwards recorded in Douglas county.

Q. 20. Did you not afterwards foreclose that chattel mortgage?

he Counsel objects as being immaterial and incompetent.

Ans. I did.

Q. 21. Who bid in the property and for how much?

Counsel objects for same reasons last stated.

Ans. It was sold at public auction, and it was bought by the public, and I don't know who bought it. I don't remember the amount it brought.

78 Q. 22. How do you know that it was bid in by the public, and what do you mean by that expression?

Ans. I attended the sale, and I saw different people bidding for goods and pay for them to the auctioneer and carry the goods away.

Q. 23. Did you buy any of those chattels?

Counsel objects as incompetent and immaterial.

Ans. I did not.

Q. 24. Did you credit the proceeds of that sale on the note or notes mentioned in the chattel mortgage?

Counsel objects for same reasons last stated and also because it is not cross-examination.

Ans. I gave a credit in court when we tried the case in court of all amounts that I had received until that time.

Q. 25. What was that amount?

Counsel objects for same reasons last stated.

Ans. I don't remember.

Q. 26. You say you were present at the execution sale under the Kaucher judgment. Did you make a bid upon any of the property then offered for sale?

Ans. I did not.

Q. 27. Are you the same Joseph Gottlieb who filed a claim against the estate of Samuel H. Thatcher, deceased, in the county court of this county?

Ans. I am.

Q. 28. Did that claim correctly represent the amount of Sam'l H. Thatcher's indebtedness to you at the time of his death?

Counsel objects as incompetent, immaterial, not cross-examination, and not the best evidence.

Ans. It was presented then by my attorneys, and I suppose it was correct.

79 Q. 29. You swore to it, did you not?

Counsel objects that it is incompetent and immaterial and not the best evidence.

Ans. I don't know whether I did or not; I don't remember.

Q. 30. Did you not first see Lewis C. Thatcher on the day he arrived here to bury his brother?

Ans. I don't remember that I did.

Q. 31. Did you not seek him out before his brother was buried and ask him to settle your claim against his dead brother?

Counsel objects; incompetent & immaterial.

Ans. I don't remember whether it was before he buried his brother. I don't think it was, but I don't remember.

Q. 32. Who was present at that interview at the American house?

Ans. Just myself and Thatcher.

Q. 33. Did not Mr. Thatcher in that interview refuse to talk with you on the subject of your claim against his brother unless his attorney was present?

Ans. No, sir.

Q. 34. When did you have any other conversation with the defendant?

Ans. We had conversations at my store, I think, and at the Occidental hall, and I might have had some conversation in the probate court-room.

Q. 35. Who was present at the conversation in the Occidental hall?

Ans. I don't know.

Q. 36. Do you swear positively that Mr. Thatcher, the defendant, was in your store at all during that visit to Denver?

Ans. I do not, but we had different conversations. It might have been by the store as he was passing.

Q. 37. Who was present and when were the conversations
80 had between you and Mr. Thatcher in St. Louis?

Ans. I don't know that there was any one present; my cousin brought me to the store where Mr. Thatcher —, but I don't know whether he stopped to listen to our conversation.

Q. 38. Did any of the conversation which you related in answer to interrogatory 20 occur in St. Louis?

Ans. Our conversation was rather brief and it related to the lawsuit and that is all.

Q. 39. Where is the property situated, when you stated an altercation occurred between you and Sam. Thatcher about who should have possession of it?

Ans. On Arapahoe street, between 18th and 19th streets.

Q. 40. How did you get possession of that piece of property?

Ans. I went to see the man that lived in the house and told him that I bought the property at sheriff's sale; that I am the owner of it; that when the next month's rent becomes due to pay me the rent and he did so.

Q. 41. Did you not offer him money if he would acknowledge you as his landlord and pay you the rent hereafter?

Ans. I did not.

Q. 42. Were you collecting rents from this property at the time you began this suit?

Ans. I don't remember dates well; I could not say whether I collected rent at that time or not.

Q. 43. Have you ever been in possession or collected rent from any of the property in controversy since that altercation between you and Sam. Thatcher?

Objected to by counsel as not cross-examination, incompetent, and immaterial and calls for a conclusion *at* law.

Ans. I have never been in possession of that house on Arapahoe street and the other property; land is lying in Arapahoe
81 county. I have not collected any rents from any of the property.

Q. 44. Referring to the sale under the Kaucher judgment, you say that Sam. Thatcher appeared to be manœuvering the sale and that a stranger would put in a nominal bid, and that Sam. Thatcher would talk to the stranger. Now, what did he say to the stranger?

Ans. I didn't hear what he said.

Q. 45. How much did the stranger bid?

Ans. Some small amount; I don't remember exactly what is was, but I remember it was always some small amount.

Q. 46. You say the property was finally struck off upon a bid made by Sam. Thatcher. Was that the highest bid made at the sale?

Ans. It was.

Q. 47. Did you not begin this suit against the de fendant while he was here to bury his brother?

Ans. I don't remember whether it was at that time, but I do remember that I brought the suit while he was here.

Q. 48. Just after beginning this suit and before the defendant returned to St. Louis, did you not make several efforts to compromise the same by a division of the property?

Counsel objects; not cross-examination, immaterial, and incompetent.

Ans. I did make an effort to have a compromise made, because I did not think it was profitable to have a long lawsuit.

Q. 49. In that conversation in the Occidental hall did you not threaten the defendant that you would protract this litigation, and did you not tell — that you were a rich man, and that you would wear him out and force him to comply with your terms if he would not then settle with you?

Counsel objects for reasons last above stated.

82 Ans. I don't remember having made any threats, but probably urged a compromise as to the best policy as between man and man.

Counsel for def'*ts* objects to answer as evasive and not responsive.

Q. 50. Did you not afterwards make the same threats and statements mentioned in the last interrogatory to the defendant at the conversation in St. Louis?

Counsel objects for same reasons last above stated.

Ans. My reply is the same as to the last question.

Counsel for def'ts objects to answer for same reasons given to last answer.

Redirect examination:

Q. 1. Was the interview at the American house before or after the funeral of Sam. Thatcher?

Ans. It was after the funeral.

Q. 2. Is the lot in block 165 and the outlying lands in the county occupied or unoccupied lands?

Ans. It is unoccupied, to the best of my knowledge.

Q. 3. Did the defendant visit Denver subsequent to the time he was here at the funeral of his brother? If so, about how long afterwards?

Counsel for def't objects as not proper re-examination.

Ans. I don't remember; I think he did, but I am not positive of it.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 22nd day of June, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

83 By agreement of counsel it is continued until Friday, the 23d day of June, A. D. 1882, at the hour of ten o'clock a. m.

J. W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Friday, the 23rd day of June, A. D. 1882, at the hour of ten o'clock a. m., *and* Mr. JOSEPH GOTTLIEB, being recalled, no objection being made by counsel for complainant, and in continuation of his cross-examination, upon questions propounded by H. C. DILLON, Esq., deposed and testified as follows:

Q. 1. In answer to cross-interrogatory 30 you say, "I don't remember that I did meet Lewis C. Thatcher on the day he arrived here to bury his brother," and in answer to interrogatory 31 you say "that you don't remember that you sought him out." Did you not leave a note at the American house on the day of Mr. Thatcher's arrival in Denver asking for an interview?

Ans. I don't remember now that I left a note at the American house, but I do remember that I did not have an interview with him until after the funeral.

Q. 2. Look at this paper, which the examiner is requested to mark Exhibit 2 for identification, and state if you did not leave this note at the American house on the day it bears date.

Ans. This is not my handwriting. Whether I authorized any one else to write such a note or not I could not swear to at this time.

Counsel for def't — as not responsive and evasive.

Q. 3. Did you not leave or cause to be left that notice at the American house on the day it bears date?

Ans. I couldn't say; I don't know.

Q. 4. Did you not have that conversation at the American
84 house on the 13th of February, 1879?

Ans. I don't remember the date when I did have the conversation, or I might say I don't know the date.

Q. 5. In whose handwriting is Exhibit 2?

Counsel for compl't objects to this as not cross-examination and incompetent and immaterial.

Ans. I don't know.

Q. 6. In answer to one of the cross-interrogatorys you say "the trust deed of Sam. Thatcher to you was recorded in Arapahoe county by mistake and afterwards recorded in Douglas county." Was all the property mentioned in that deed situated in Douglas county?

Counsel for comp't objects because not proper cross-examination and as incompetent and immaterial.

Ans. I think it was.

Q. 7. Did you not also have a deed of trust securing that or some other note of Sam. Thatcher's on twenty acres of land situated near the fair grounds in this county?

Counsel for compl't objects for the reasons last above stated and because it calls for the contents of a written instrument or of a public record by parol.

Ans. I don't understand the question, but I had attached a note in the possession of Gray & Eicholtz and belonging to Sam'l H. Thatcher. I attached it and had it sold at public auction as his property. I was the highest bidder at the sale. I bought that note, which was secured by a trust deed on land.

Q. 8. How much did you realize from that note and the property which you acquired under it at the trustee's sale?

Counsel objects as not cross-examination, incompetent, and immaterial.

Ans. To the best of my recollection I rendered an account
85 of it to the district court of Arapahoe county.

Q. 9. Did you not give credit in that account only for the amount bid for the note and not for any of the money which you have realized from the property acquired by you at the trustee's sale?

Counsel for compl't objects for the reasons last above stated, and also because it appears that it is a matter of record.

Ans. I don't remember which credit I gave, but I do think—if I am not mistaken—that the sheriff gave the credit for the amount that the note realized at public sale.

Def't's counsel objects as being evasive and not responsive.

Q. 10. How much of that twenty acres have you sold and what have you realized from it?

Counsel for compl't objects as not being proper cross-examination, imcompetent, and immaterial.

Ans. I sold none; realized nothing.
Q. 11. Do you still claim to be the owner of it?

Comp't's counsel objects for the same reasons last above stated.

Ans. I do.
Q. 12. Do you still own that property in Douglas county?

Compl't's counsel objects for the reasons last above stated, that it is not the best evidence and calls for a conclusion of law and not facts.

Ans. I do.
Q. 13. Do you hold or claim to be the owner of any other property which you have acquired from or through Sam. Thatcher in this State or elsewhere? And, if so, state what and where it is.

86 Compl't's counsel objects as not proper cross-examination, incompetent, immaterial, and impertinent.

Ans. I claim the Arapahoe county property that is in controversy in this case and the Douglas county property and the property that I acquired through the sale of that note, and that is all.
Q. 14. What is the value of that twenty acres and the Douglas county property? State as nearly as you can.

Compl't's counsel objects for all the reasons last above stated.

Ans. I don't know. I cannot tell.
Q. 15. Is it not worth more than the amount of your claim filed against the estate of Samuel Thatcher?

Compl't's counsel objects for all the reasons last above stated.

Ans. I don't know.
Q. 16. ——.

J. GOTTLIEB.

Subscribed and sworn to before me this 23d day of June, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant produces ROBERT R. MCCORMICK, a witness on his own behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. 1. State your name, age, occupation, and place of residence.
Ans. Robert R. McCormick; age, 49 years; occupation, real estate, and residence in Denver, Arapahoe county, State of Colorado.
Q. 2. How long have you lived in Denver?

87 Ans. Since August 10th, 1867.

Q. 3. Did you know Samuel H. Thatcher, lately of Denver; and, if so, how long since you became acquainted with him in Denver?

Ans. Probably I first became acquainted with him in the fall of 1869.

Q. 4. Were you one of his sureties on his appeal bond in the case of Samuel Kaucher *vs.* Samuel H. Thatcher, in the supreme court of the Territory of Colorado or in the Supreme Court of the United States, either or both?

Ans. I was one of his sureties on his bond when the appeal from the Territory of Colorado to the Supreme Court of the United States was taken in Kaucher *vs.* Thatcher.

Q. 5. Do you remember the circumstances of the time when you first heard that the judgment had been affirmed by the Supreme Court of the United States?

Ans. The first intimation I had was through Mr. Le Fevre. He met me on the street and told me — had been affirmed by the Supreme Court of the United States; that was by telegram in the paper, and says he, Mack, you have got to pay it. I can't state exactly the time; couldn't tell you within a year or two.

Q. 6. Did you see Samuel H. Thatcher and talk with him about that judgment after you received this information from Mr. Le Fevre?

Counsel for def'ts objects as improper and incompetent and immaterial.

Ans. I did see him the next day or the same day.

Q. 7. When did you see him? And give the conversation, if any, which occurred between you and Sam'l Thatcher in relation to that judgment or your liability to pay the same.

Def't's counsel objects as incompetent to bind the defendant unless he was present and as immaterial.

88 Ans. Interview with Mr. Thatcher was in his place of business, corner of Blake & 15th streets, 2nd story in Filmore block. I told Mr. Thatcher that there had been a judgment rendered against him in the Kaucher suit as reported by the telegram from Washington—the Supreme Court; that myself and Mr. Joseph E. Bates were liable and would have to pay it or sell out the securities he had given us unless he would pay it himself. He said that he would attend to it and pay it himself.

Q. 8. What further occurred between you and Sam'l H. Thatcher at that time in relation to the matter of that judgment?

Def't's counsel objects for the reasons last stated.

Ans. He said that he would pay it or would be paid and I needn't look after it further, and I have not heard of it from that to this until I was told I was wanted as a witness here.

Q. 9. Do you remember of going on that occasion with Sam'l H. Thatcher to the office of Mr. Le Fevre?

Def't's counsel objects as leading.

Ans. I did, sir; with Mr. Thatcher.

Def't's counsel objects as not responsive.

Q. 10. State what, if anything, transpired in your presence, after you got to Le Fevre's office, between Sam'l H. Thatcher and Le Fevre, giving as near as you can the conversation, if any, between Sam'l H. Thatcher and Le Fevre relating to the judgment of Kaucher *vs.* Thatcher.

Def't's counsel objects as incompetent to bind the defendant, calling for a conversation in which he was not present.

Ans. I went up with Sam'l H. Thatcher to Mr. Le Fevre's office and introduced him to Mr. Le Fevre, who claimed to own this judgment, and Mr. Thatcher told Mr. Le Fevre to issue an execution against certain real estate which he owned in this city and
89 to advertise the same *for same* for sale to satisfy this judgment. To the best of my recollection that is the conversation that occurred. I immediately left Mr. Le Fevre's office, leaving Mr. Thatcher to make out the list of property to be advertised and sold.

Q. 11. Do you or do you not remember to have seen a sheriff's advertisement of property to be sold under the Kaucher judgment soon after this interview in Le Fevre's office?

Def't's counsel objects as leading and immaterial.

Ans. I do not recollect of having seen that advertisement; may have seen it, but do not recollect of having seen it.

Cross-examination:

Q. 1. Was the defendant, Lewis C. Thatcher, present at any of the conversations you have related?

Ans. He was not.

Q. 2. How distinct is your recollection of what took place in Le Fevre's office at the last interview mentioned by you?

Ans. I think my recollection is positive of what occurred.

Q. 3. In answer to interrogatory 10 you say you left Le Fevre's office, leaving Thatcher there to make out a list of the property to be sold. Do you know what Thatcher did after you left?

Ans. I do not.

Q. 4. ——.

ROBERT R. McCORMICK.

Subscribed and sworn to before me this 23d day of June, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

By agreement of counsel the further taking of testimony on behalf of complainant was suspended for the purpose of per-
90 mitting the defendant to proceed with his testimony, to be resumed upon the direction of examiner & consent of counsel, when required by complainant.

J. W. WEBSTER *Examiner.*

By consent of counsel the taking of further testimony on part of complainant was resumed at my office this seventh day of July, A. D. 1882, at the hour of ten o'clock a. m., counsel being present. Complainant's counsel produces WILLIAM A. SMITH, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposed and testified as follows:

Q. 1. State your name, age, occupation, and place of residence.

Ans. My name is William A. Smith; age, 42 years; occupation, coal merchant, and reside in Denver, Arapahoe county, State of Colorado.

Q. 2. Do you know the complainant and the defendant in this cause or either of them, and how long have you known them?

Ans. I have known Mr. Gottlieb for about 16 or 17 years; Mr. Thatcher I have known about three. I have known him since the death of his brother, Sam'l H. Thatcher.

Q. 3. Did you know one Samuel H. Thatcher, now deceased, in his lifetime—a brother of the defendant, Lewis C. Thatcher?

Ans. Yes, sir; knew him well.

Q. 4. Where did said Samuel H. Thatcher reside when you knew him, and how long did you know him?

Ans. He resided in Denver, and I have known him since the closing of the war.

Q. 5. What official position, if any, did you hold in con-
91 nection with the sheriff's office in the county of Arapahoe, Colorado, between the years 1875 and 1880?

Ans. I was made under sheriff a part of the time for Mr. Cook.

Q. 6. During what part of said time between 1875 and 1880 did you hold the position of under sheriff in said county of Arapahoe?

Ans. In the fall of 1875 until the 18th or 20th day of January, 1880.

Q. 7. While you were under sheriff of the county of Arapahoe do you remember anything about an execution having come into your hands as such under sheriff, issued from the office of the clerk of the district court of said county of Arapahoe upon a judgment in favor of the complainant, Joseph Gottlieb, against said Samuel H. Thatcher, commanding you to levy upon the property of said Samuel H. Thatcher? And, if so, state what you did in connection with it.

Def't's counsel objects as incompetent and because it does not call for the best evidence of what he did.

Ans. Yes, sir; I remember of an execution of that description, I think, from the district court. I went and saw Mr. Thatcher about it and carried it some time on a promise that he would fix it up and declined to levy on any property until I received positive orders from Mr. Gottlieb to do so. I finally received such order and made a sale of the property, and, I think, satisfied the claim or satisfied it in part; I cannot tell for certain; I think I returned it satisfied in part, upon reflection.

Q. 8. How many executions did you receive while such under

sheriff wherein Joseph Gottlieb was plaintiff and said Samuel H. Thatcher was defendant besides the one of which you have testified?

Ans. I don't remember of any.

Q. 9. Where or at what place did you see said Samuel H.
92 Thatcher in reference to this execution of which you have testified, and how often did you see him in reference to it?

Def't's counsel objects as immaterial.

Ans. I saw him at his gambling-room, corner of Blake and 15th streets, and at the court-house, at Lawrence and 15th street. I should say twice at the court-house and eight or ten times, perhaps, at his keno-rooms.

Q. 10. What did Mr. Samuel H. Thatcher say to you in reference to this execution and to Mr. Gottlieb when you saw him at the keno-rooms, if anything?

Def't's counsel objects as immaterial and incompetent.

Ans. I first went to him about it and he refused to pay, and said Kate Fulton should pay it. I told him in substance that he should pay it or shut up shop. Then he told me that he would fix it up if I would give him a little time on it. At a subsequent conversation in reference to it he declined to pay it again and wanted me to levy the execution on real estate. I refused to do so unless Mr. Gottlieb ordered it, and I wanted him to pay the execution. He wanted me to induce Mr. Gottlieb to have the writ levied on some real estate. I told him I shouldn't meddle in it; that he should attend to that himself, and he wanted to know what interest I had with Mr. Gottlieb that I should take sides with him. I told him I had none; that it was a rule of Mr. Cook's that no party should run a gambling-house in this county and we carry an execution against him. The matter dropped there for some time and remained quiet, and I finally levied and made sale of real estate on a list of real estate handed to me by Mr. Thatcher at the sheriff's office.

Q. 11. Who was this Mr. Cook that you have named in your last answer?

93 Ans. D. J. Cook, sheriff of Arapahoe county.

Q. 12. Did Mr. Samuel H. Thatcher at any of these interviews had between him and yourself while you had that execution give any reason to you why he wanted you to levy said execution on that real estate? And, if so, state as near as you can the substance of what he said.

Def't's counsel objects because it is leading and incompetent.

Ans. Yes, sir; he said if it was any other man but Gottlieb he would pay it; that he wanted Gottlieb to levy on real estate and satisfy the execution, then he would have him cinched. He claimed that his (Gottlieb's) title to the land would be of no account, and if he didn't beat him in any other way that land wasn't his, nohow. At the sheriff's office I talked to him about it, and he wanted to know if I knew how much Gottlieb was going to bid on the

property, whether he would bid the amount of the execution or not. I told him I wanted to know something about it; that I didn't propose to sell it and have it struck off for two or three dollars apiece and get beat out of my commissions of sale. He said that he would attend to that and have some party there to make Mr. Gottlieb bid the amount of the execution. I called his attention to a prior lien that somebody had informed me of, and he asked me to keep quiet about that and didn't want Gottlieb to know anything about it; all he wanted was Gottlieb to satisfy this execution. He was there at the day of sale and talked with me about the matter.

Q. 13. Now, Mr. Smith, while you were such under sheriff did an execution come into your hands issued from the office of the clerk of the district court of the county of Arapahoe and State of Colorado by virtue of a judgment in favor of one Samuel Kaucher against said Samuel H. Thatcher? And, if so, state when, with refer-
94 ence to the other execution of which you have testified, this said execution came to your hands.

Ans. I remember one; may have been more, but it was after this one of which I have testified, I think; quite awhile afterwards.

Q. 14. After you had received the execution at the suit of Kaucher *vs.* Thatcher, referred to in the last interrogatory, did you see Mr. Sam'l H. Thatcher in reference to it; and, if so, what, if anything, did he say to you about it or in reference to the plaintiff, Gottlieb?

Counsel for def't objects because it is incompetent and immaterial.

Ans. Yes, sir; I saw him after the execution was placed in my hands, and he wanted me to levy on the same property I had sold to Gottlieb, under the former execution, and sell it as quick as I could; that he had the dammed thief now where he wanted him. I told him all right, I didn't care, I would sell it forty times if they wanted me to if they would pay the costs and bid up lively on it. He said he would take care of that part of it and bid the amount of the judgment, and that I could charge up what fees I was a mind too, provided I made the sale as soon as possible. This was the purport of what was said at that time.

Q. 15. After the conversation which you have just detailed and prior to the day of sale under the execution in the case of Kaucher *vs.* Thatcher, did you have any other conversation with said Sam'l H. Thatcher in relation to same matter? And, if so, state the substance of it as nearly as you can.

Def't's counsel objects as immaterial, incompetent, and improper for an officer to relate confidential communications made to him in the course of his official duty.

Ans. I had two or three conversations with him in refer-
95 ence to what Mr. Gottlieb should have said to other parties in town between the first conversation and prior to the day of sale. The substance of the conversation was as to whether Mr. Gottlieb was going to buy this property himself at the sale, telling me

what he had heard in reference to the matter, and I telling him the same.

Q. 16. State whether or not during these conversations had with Thatcher, between the first conversation of which you have just spoken, in relation to the Kaucher execution, and the morning of the day of sale under that execution, said Samuel H. Thatcher expressed any preference or anxiety about the plaintiff Gottlieb's bidding at the sale for the property; and, if so, what he said or did.

Def't's counsel objects for same reasons last stated above, and because it is leading.

Ans. That was the only anxiety he had at all in the matter; that was what he wanted of me all the time; the question was what Gottlieb was going to bid; it seemed to be the whole gist of the thing

Q. 17. On the day of sale, under the Kaucher execution, did you see said Sam'l H. Thatcher; and, if so, where? And if he said anything in reference to it to you or in your presence, state it or the substance of it, or nearly as you can.

Def't's counsel objects for the reasons last above stated.

Ans. I did see him at the court-house on the morning of the day of the sale, and he wanted to fix it up with me to bid more than Gottlieb would bid, and he first wanted to know if there was going to be a sale. I objected to fussing with him about — unless I knew they were going to be cash bidders. I objected to running bids and knocking off the property, and then not have the bidders take the certificate of purchase; I wanted to know that it was a sure sale. He tried to satisfy me from two or three parties that were present that if they bid they would take the property, and said there was no trouble about the money; they had the Jew where they wanted him; that they would buy the property and pay for it. I told him that I had rather see the money than to have the assurance of these other fellows. He assured me that that was all right, the money was his, and that he had it himself. I wanted him to show me the money, and he says, Yes, damn you, then you will levy on it. I tried to assure him that I wouldn't, and he finally showed me a roll of greenbacks in his pocket; I don't know how much was in it. Then I says to him, All right, Sam. If I was going to take bids for property for $5,000 or $10,000 and they not have any—that is, him and his friends. Then he asked me if I was satisfied and would take any bid that he made; that he did not want to go to the sale; let Gottlieb bid, and for me to refuse to take his bid. I told him all right, go ahead; I would take any bid offered and depend on him to raise them out. Then he asked me and wanted to know if more was bid than the judgment who the money would go to. I told him it would go back to him, I guessed, and I explained to him how I did in other executions when I had more money than enough to pay the debt. Then he told me that his brother was going to buy the property. I asked him who was going to bid on it on this final arrangement, and he said he would bid for his brother in the name of his brother.

96

Q. 18. Do you recollect now whether or not the exact amount was bid at the sale required to satisfy the execution and costs?

Def't's counsel objects because it is incompetent; does not call for the best evidence.

Ans. I do.

Q. 19. State now what you recollect about it.

Def't's counsel objects for same reasons last above stated.

97 Ans. There was in the neighborhood of $100 more than enough to satisfy the execution. I know it from the reason that the arrangement was made between Thatcher and I; that he was to raise every bid for his brother and the surplus was to go back to Samuel H. Thatcher.

Q. 20. What was done with this surplus of which you have just spoken?

Ans. I paid it over either to Sam'l H. Thatcher or his attorney; I don't know which.

Q. 21. ——.

Cross-examination:

Q. 1. Was Lewis C. Thatcher, the defendant, present at any of the interviews and conversations between you and Sam'l H. Thatcher related by you in your direct examination?

Ans. No, sir.

Q. 2. Was the complainant, Gottlieb, present at the execution sale under the said Kaucher judgment; and, if so, did he bid at that sale?

Compl't's counsel objects to that part of the question relating to whether plaintiff bid at the sale, because it is not proper cross-examination in relation to matters called out in the direct examination, is immaterial & irrelevant.

Ans. He was present at the sale and I think bid, but I will not be positive.

W. A. SMITH.

Subscribed and sworn to before me this 7th day of July, A. D. 1882.

J. W. WEBSTER, *Examiner.*

98 Complainant's counsel now produces in evidence on his part a record of a warranty deed, Samuel H. Thatcher to Lewis C. Thatcher, dated November 13th, 1876, and recorded in the office of the county clerk & recorder of Arapahoe —, in Book 88, page 566, November 18th, 1876, a certified copy of which is hereto annexed, marked Exhibit J, and made a part of the evidence in this case.

Also complainant's counsel produces in evidence on his part the record of a power of attorney made by Lewis C. Thatcher to Samuel H. Thatcher, dated January 11th, 1878, and recorded in the office of the clerk and recorder of Arapahoe county January 29th, 1878,

in Book 95, page 566, a certified copy of which is hereto annexed, marked Exhibit K, and made a part of the evidence in this case.

To which def't's counsel object because incompetent and immaterial.

Compl't's counsel now offers in evidence on the part of complainant the record of a notice *lis pendens* in this suit, which was recorded in the office of the clerk & recorder in the county of Arapahoe, in Book 100, page 235, February 18th, 1879, a certified copy of which is hereto annexed, marked Exhibit L, and made a part of the evidence in this case.

To which def't's counsel objects, because the same is incompetent and uncertain and fails to comply with the law concerning notices of *lis pendens*.

By consent of counsel the further taking of testimony is continued until Saturday, the eighth day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner*.

99 Pursuant to the foregoing continuance this Saturday, the 8th day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver, the counsel of the respective parties being present, it is agreed that the complainants have leave to produce such further testimony-in-chief as he may desire during the remaining time allowed the defendant to complete the taking of his testimony, but not later than August 1st, 1882, and the defendant is to have until September 1st, 1882, to complete the taking of his testimony, and the further taking of testimony is continued by consent of counsel until Wednesday, the 12th day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner*.

Pursuant to the foregoing continuance this Wednesday, the 12th day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office in Denver, the counsel of the respective parties being present and consenting thereto, the further taking of testimony is hereby continued until July 31st, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner*.

Pursuant to the foregoing continuance this 31st day of July, A. D. 1882, at ten o'clock a. m., at my office, the counsel for the respective parties being present, the defendant's counsel consenting, plaintiff may take testimony on his behalf on Tuesday, the 8th day of August, A. D. 1882, at ten o'clock a. m., at my office.

JOHN W. WEBSTER, *Examiner*.

100 Pursuant to the foregoing continuance this Tuesday, the 8th day of August, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present and consenting thereto, the plaintiff produced EDWARD A. RESER, a witness in his behalf, who, being duly sworn by me to testify to the

truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name, Edward A. Reser; age, 42 years; occupation, real-estate broker, and reside in Denver, Arapahoe county, Colorado.

Q. How long have you resided in Denver and how long have you been engaged in the real-estate business in Denver?

Ans. I have been in Denver about 22 years and I have been in the real-estate business for the last 14 years.

Q. Do you know the property, lot 27, block 78, east Denver?

Ans. Yes, sir; I do. I know where it is located.

Q. Do you know its market value?

Def't's counsel objects because it is immaterial, incompetent, and improper.

2nd. Because the witness has not qualified himself to give testimony in regard to the value of this lot.

Ans. I think I do.

Q. Have you ever seen the property?

Def't's counsel objects because it is immaterial, incompetent, and improper.

Ans. Yes, sir.

Q. What is its market value?

Def't's counsel objects because it is immaterial, incompetent, and improper and because the witness has not shown himself competent to testify as to the value of it.

Ans. Well, I should think it would be well worth four
101 thousand ($4,000.00) dollars at this time.

Q. Do you know the property, lot 4, block 165, east Denver?

Def't's counsel objects because it is immaterial, incompetent, and improper.

Ans. Only in a general way. I know it from looking at the map and its location.

Q. Have you ever seen the lot?

Def't's counsel objects for same reasons assigned to the previous question.

Ans. I most assuredly have seen the lot and can go right to it.

Q. What is its market value?

Def't's counsel objects because immaterial, incompetent, and improper, because the witness has not shown himself competent to testify of its value.

Ans. Well, I should place it from $1,000.00 to $1,500.00 *dollars.*

Q. Have you ever seen section 24, township 1 south, range 67 west, and section 26, same town. and range, and section —, township 3, same range?

Def't's counsel objects because immaterial, incompetent, and improper.

Ans. I have.

Q. Do you know the market value of the land?

Def't's counsel objects for same reason assigned to the last question.

Ans. I think I do.

Q. You may state what, in your opinion, is the market value per acre of the northeast quarter and southwest quarter of section twenty-four (24) and the east one-half of the southeast quarter of section twenty-six (26), all in town. one (1), range sixty-seven (67) west.

102 Def't's counsel objects because incompetent, immaterial, and improper and because the witness has not shown himself competent to testify of the value.

Ans. I should place it from $12.50 to $15.00 *dollars* per acre.

Q. What, in your opinion, is the market value of the southeast quarter of section 24, town. 3, range 67 west?

Def't's counsel objects for same reasons assigned to the last question.

Ans. I would place that at from $10.00 to $15.00 per acre if it is under irrigation.

Cross-examination:

Q. Have you ever visited the town lots in west and east Denver, of which you have spoken in your direct examination, with a view of ascertaining their value, and do you know whether there are any improvements on them or not?

Ans. I have not. I gave my testimony as to the value of the lots separate from any improvements.

Q. Have you ever visited the lands about which you have testified in your direct examination with a view of examining them and ascertaining their value?

Ans. The lands in township one—I was there and looked that over several years ago, but have not examined the lands in township three (3).

EDWARD A. RESER.

Subscribed and sworn to before me this 8th day of August, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Plaintiff produces CHARLES H. SCOTT, a witness heretofore sworn in the cause, now recalled, who deposed and testified as follows:

103 Q. Have you examined the records in your office for the purpose of ascertaining the lands or real estate which was

standing in the name of Samuel H. Thatcher or shown by the records on the 13th of November, 1876, in the county of Arapahoe?

Ans. Yes, sir.

Q. Give the description of the real estate, if any, which, according to the records of your office, stood in the name of Samuel H. Thatcher on that day.

Def't's counsel objects because it is incompetent & immaterial and because it calls for secondary evidence and for parol evidence of what the records of Arapahoe county contain, the records being the best evidence of the fact sought to be proved.

Ans. The northeast quarter of the southwest quarter, section 24, township one (1), range 67.

The east one-half of the southeast quarter of section twenty-six (26), township one (1), range 67; the southeast quarter of section 24, town. 3, range 67; lot 4, block 165; lot 27, block 78, east Denver.

Q. In your answer to the last question you have given as a part of the description the northeast quarter of the southwest quarter of section 24, town. 1, range 67. Now, examine Exhibit J (now handed witness) and state whether there were other lands in the same section standing in the name of Samuel H. Thatcher which you did not mention.

Def't's counsel objects for same reasons last above assigned and because it is incompetent to give parol testimony on the subject matter.

Ans. My answer should have read the northeast quarter and the southwest quarter of section 24.

104 Q. Is the real estate described by you all the real estate which upon your search you found in the name of Samuel H. Thatcher on the *the* 13th of November, 1876?

Def't's counsel objects for same reasons assigned to the last question.

Ans. Yes, sir.

CHAS. H. SCOTT.

Subscribed and sworn to before me this 8th day of August, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

The cross-examination of this witness is reserved by consent of counsel until Mr. Dillon's return, and the further taking of testimony is continued until Thursday, the 10th day of August, A. D. 1882, at ten o'clock a. m., at may office.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, the defendant's counsel not having any cross-questions to ask witness Scott, the counsel for the respective parties being present and consenting thereto, the fur-

ther taking of testimony was continued until Tuesday, the 15th day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this Tuesday, the 15th day of August, A. D. 1882, at ten o'clock a. m., at my office, the counsel for the respective — being present and consenting thereto, the further taking of testimony is continued until Wednes-
105 day, the 16th day of August, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this Wednesday, the 16th day of August, 1882, at ten o'clock a. m., at my office, the counsel for the respective parties being present, the complainant recalls JOSEPH GOTTLIEB, who, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. You are the same Joseph Gottlieb who is the complainant & have once testified in this case?

Ans. I am.

Q. When did you first become acquainted with Samuel H. Thatcher and where?

Def't's counsel objects because immaterial.

Ans. To the best of my recollection, it was about ten years ago, at my store, in the city of Denver, county of Arapahoe.

Q. What business was he engaged in at that time and whereabouts was his place of business?

Def't's counsel objects because it is immaterial and irrelevant.

Ans. Thatcher's business, to the best of my knowledge, was a gambler. I first knew his gambling-house on the alley back of the News office, and after that he run the Occidental keno rooms on the corner of Blake & 15th streets, and he continued to run them until he died.

Q. About what was the distance between your place of business and the Occidental keno rooms, and also between your place
106 of business and Thatcher's previous place of business?

Ans. It was about 200 feet from my place of business to the Occidental hall—about a half a block—and it was about a block and a half to his place on the alley back of the News office.

Q. How frequently did you see Mr. Thatcher after you first made his acquaintance down to November, 1876?

Ans. In 1876 I saw him pretty often, as he was a neighbor of mine. I should judge that I must have seen him 4 or 5 times every week, if not more. Before that I used to see him occasionally; I could not tell how often.

Q. State what personal property you know of his being in possession of, including movable chattels, and also debts due him from

responsible persons, if any, as well as any other personal property of whatever nature in the months of October and November, 1876.

Def't's counsel objects because it is incompetent and because the witness has not qualified himself to answer this question.

Ans. He owned a gambling-room on the corner of Blake & 15th streets, known as the Occidental hall, and he run a bar-room in connection with it. He owned a gold watch and chain and a diamond pin, which he wore on his person, and I made diligent search to find what personal property he did possess, and that is all I found, as far as personal property is concerned.

Q. What do you mean by saying that he owned Occidental hall? In answering this question I desire you to further consider what was asked of you in the preceding question.

Def't's counsel objects for same reasons last stated and because it is leading.

Ans. I did not mean to convey the idea that he owned Oc-
107 cidental hall, but I meant to convey the idea that he was doing business in a place called the Occidental hall, and then he had a lot of gambling tools, such as faro chips, faro boxes, and keno tools, lot of playing cards, also some tables and chairs belonging to such a gambling-room. He also had a little kitchen connected with it where they use to give free lunches sometimes late at night, and then there was a bar-room in the same hall, which had counters, shelving, and a lot of liquors in bottles, and cigars. There was also a small iron safe up there, and other things used in such a place of business.

Q. You have said that you first became acquainted with Samuel H. Thatcher about ten years ago. Did you or did you not know of him as a citizen of Denver before your personal acquaintance; if yea, for how long before that?

Def't's counsel objects because it is irrelevant and immaterial.

Ans. I couldn't tell. I might have heard of him and I might not. I can't tell.

Cross-examination:

Q. What search did you make to discover personal property belonging to Samuel H. Thatcher?

Ans. I went around amongst his friends and acquaintances and made inquiries about his business and where he had anything that I could find out, and I could not find anything except that gambling hall, and at a later season the deputy sheriff had an execution of my judgment, and he was looking for personal property and he could not find any, with the exception of a note which we afterwards found in the possession of Mr. Eicholtz, which the deputy sheriff levied upon and sold.

Q. What was the amount of that note, and give the name or names of the maker?

108 Ans. The maker of the note was Annie C. McCormick; I don't remember the amount it called for.

Q. Was the note secured?

Ans. It was secured by a trust deed.

Q. Who was the trustee mentioned in the deed; for whose benefit was it given?

Ans. The trustee was David H. Moffatt. It was for the benefit of Samuel H. Thatcher.

Q. Did you not cause that deed of trust to be foreclosed under your execution against Sam. Tnatcher?

Compl't's counsel objects because it is not cross-examination and is not the best evidence of the fact, and immaterial.

Ans. I did.

Q. Who bid in the property at the sale?

Comp't's counsel objects for same reasons last above stated, that the witness has formerly been over all this ground.

Ans. I did.

Q. How much did you bid for it?

Comp't's counsel objects for same reasons last above stated.

Ans. I don't remember.

Q. Do you own that property now?

Compl't's counsel objects for the same reasons last above stated.

Ans. I do.

Q. Do you know how much money, notes, bills, or other personal property Sam. Thatcher had in that safe mentioned by you?

Ans. I don't.

Q. Give the names of the friends and acquaintances of
109 whom you inquired about Sam. Thatcher's personal property.

Ans. I don't recollect any names, it has been so long ago.

Q. Did you make any search outside of Arapahoe county?

Ans. Not to my knowledge.

Q. Did you not make an affidavit and cause the same to be filed in the county court of this county in the estate of Samuel H. Thatcher, deceased, that you had reason to believe and did believe that the said Samuel H. Thatcher, at the time of his death and previous thereto, was possessed of a large amount of personal property, including money, jewels, and other valuable things, and in that affidavit did you not name a certain person or persons whom you wished to have cited before that court to be interrogated concerning such personal property?

Compl't's counsel objects for all the reasons above stated and because it is incompetent and irrelevant.

Ans. I suppose that I have made such a statement in the probate court. That was at a much later time. From the time I first testi-

fied too that I couldn't find any other personal property except what there was at that Occidental hall.

Q. You have said that Samuel H. Thatcher was a gambler in that business. What was his reputation for fair dealing?

Compl't's counsel objects because it is incompetent and immaterial and not cross-examination.

Ans. Like all other gamblers; they will rob you when they can.

Q. Is not that also true of pawnbrokers?

Compl't's counsel objects for all the reasons last above stated.

Ans. No.

J. GOTTLIEB.

110 Subscribed and sworn to before me this 16th day of August, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant now offers the record of sheriff's deed, dated the 25th day of November, 1878, signed David J. Cook, sheriff of Arapahoe county, to Lewis C. Thatcher, and recorded in Book 104 of the records of Arapahoe county, page 245, a certified copy of which is hereto annexed and marked Exhibit M and made a part of this testimony.

Thereupon the taking of further direct testimony on part of complainant is closed this 16th day of August, A. D. 1882, except as to certain record papers.

JOHN W. WEBSTER, *Examiner.*

By stipulation of counsel the taking of further testimony and proofs is reopened to permit pl'ff to put in some further evidence on this 24th day of August, A. D. 1882, at ten o'clock a. m., at my office.

The plaintiff produced G. S. RICHARDS, a witness, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. ——?

—. I am the G. S. Richards who formerly testified in this case as witness, and still continue to be the deputy clerk of the district court of the second judicial district within and for the county of Arapahoe, and that the papers produced in the case of Samuel Kacher *vs.* Samuel H. Thatcher are a portion of the records
111 of this office and are the original file of papers belonging to the case, and this book produced is also a part of the records of the office and is a judgment docket.

G. S. RICHARDS.

Subscribed and sworn to before me this 24th day of August. A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Plaintiff's counsel now offers in evidence an execution and fee bill in the case of Samuel Kaucher *vs.* Samuel H. Thatcher, dated the 29th day of January, 1878, together with the endorsement of the return of said execution by the sheriff of Arapahoe county, and also a receipt attached to said execution signed by Samuel H. Thatcher, and another by Owen E. Le Fevre, or Jacobson & Le Fevre, and by Charles & Dillon for Charles & Phelps, and also the proof of publication of notice of sale under said execution, certified copies of which are hereto annexed and marked Exhibits N, O, & P and made a part of the testimony.

Plaintiff's counsel also offers in evidence the judgment docket showing a judgment in favor*ing* — Samuel Kaucher *vs.* Samuel H. Thatcher for two thousand seven hundred and thirty-five dollars and seventy ($2,735.70) cents — was docketed May 7th, 1874, and also the following proceedings: "Feb'y 15th, 1875, filed papers purporting to be assignment of interest in judgment to Charles & Phelps. Edward F. Bishop, clerk, by Charles W. Taylor, deputy."

"Mar. 25, 1875, filed paper purporting, &c., assignment to Jacobson & Le Fevre." Ex. issued Jan'y 29, 1878, returned Feb'y 20, 1878, satisfied in full.

112 Miss G. S. RICHARDS, being recalled, duly sworn, deposed and testified as follows:

The docket and papers here produced are the only official records and memoranda of the issuing of an execution in the case of Samuel Kaucher *vs.* Samuel H. Thatcher.

Cross-examination:

Q. Please produce the journal of this court containing the record of the judgment in the case of Kaucher *vs.* Thatcher.

Ans. Witness produces Journal No. 9 of this court, page 158, as the record inquired after.

Q. State whether you have among the files produced by you an appeal bond in the same case to the supreme court of the Territory of Colorado.

Ans. I have. (Witness here produces it.)

Q. Have you among the same files a remittitur from the supreme court in the same case? If so, please produce it.

Ans. Yes, sir; I have. (Witness here produces it.)

G. S. RICHARDS.

Subscribed and sworn to before me this 24th day of August, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Counsel for defendant now offers in evidence as a part of the cross-examination of the witness Richards the record of the said judgment in case of Samuel Kaucher *vs.* Samuel H. Thatcher, in Journal 9, at page 158, a certified copy of which is hereto annexed and marked Exhibit 5 and made a part of the testimony herein.

Also offers in evidence the appeal bond produced by said
113 witness, a certified copy of which is hereto annexed and marked Exhibit 6 and made a part of the testimony herein.

Also offers in evidence the remittitur produced by her, a certified copy of which is hereto annexed and marked Exhibit 7 and made a part of the testimony herein.

The complainant's counsel objects to the appeal bond & remittitur as incompetent and immaterial.

It was stipulated by counsel that defendant may have until the 10th day of September, A. D. 1882, to complete the testimony on his part, and the further taking of direct testimony on behalf of plaintiff is closed this 24th day of August, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's Testimony.

By agreement of counsel this 23d day of June, A. D. 1882, the taking of testimony on behalf of complainant was suspended, and the defendant produced PHILIP TROUNSTINE, a witness on his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in this cause, deposed and testified as follows:

Q. 1. State your name, age, occupation, and residence.

Ans. My name is Philp Trounstine; age, 40 years; occupation, merchant; residence, Denver, Colorado.

Q. 2. Do you know the defendant, Joseph Gottlieb; if so, how long have you known him?

Ans. Yes, sir; ten or twelve years.

— 3. Where has he resided and what has been his occupa-
114 tion during that time?

Ans. I think he lived here in Denver, Colorado. Merchant and pawnbroker has been his occupation during that time.

Q. 4. Do you know his reputation for truth and veracity in this neighborhood?

Comp't's counsel objects for the reason that no proper foundation has been laid for the question and immaterial.

Ans. I do.

Q. 5. Is that reputation good or bad?

Comp't's counsel objects for the reasons last above stated and that it is leading.

Ans. Bad.

Q. 6. From your knowledge of that reputation, would you believe him under oath in a case where he has a pecuniary interest?

Comp't's counsel objects that no proper foundation has been laid for the question; that it is incompetent, and the witness does not appear to be qualified to answer.

Ans. I would not.

Cross-examination:

Q. 1. Mr. Trounstine, have you had any business transactions with the complainant in this case or any transactions of any sort with him since he has lived in Denver?

Ans. None of any consequence.

Q. 2. Have you had any?

Ans. Yes, sir.

Q. 3. Business transactions?

Ans. Yes, sir.

Q. 4. Were they business transactions?

Ans. They were of a very trifling nature.

Q. 5. What business transactions have you had with him
115 and when did you have them?

Ans. I bought a pawn ticket issued by him from a party by the name of Burroughs, and took the ticket down there and took up the property, which occurred about ten years ago. This is all that I call to mind now.

Q. 6. Mr. Trounstine, who did you ever hear speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. Well, sir; a great many people; quite a number of gentlemen right in this room. I have heard J. U. Marlow speak of it and William Hickey, ex-chief of police; Henry Levison, A. Jacobs, John T. Lower, and quite a number of others.

Q. 7. Mr. Trounstine, will you please name all the persons that you have heard speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. It would be almost impossible for any one man to commit a list to memory of that kind.

Def't's counsel objects to the answer as not responsive to the question.

Q. 8. Will you please give the names of all the persons you remember to have heard speak of Mr. Gottlieb's reputation for truth and veracity in addition to those you have already named?

Ans. I can't give the names without going out on the street with a subscription list.

Comp't's counsel objects to the answer because not responsive and is impertenent.

Q. 9. You did not answer my last question. Will you please now answer it?

A. Well, I don't know that I can call to memory any more just at present.

Q. 10. What did J. U. Marlow say to you in regard to the reputation of Mr. Gottlieb for truth and veracity?

116 Ans. He said he wouldn't believe him under oath.

Q. 11. Did not Mr. Marlow say this at a time when Gottlieb had sued him upon a contract for money, or about that time?

Ans. I don't know anything about that.

Q. 12. Do you not know that Mr. Marlow had about the time he spoke to you of this had some difficulty with Mr. Gottlieb?

Ans. No, sir; I did not.

Q. 13. How long ago was it that you heard Mr. Marlow speak of this?

Ans. It may have been within a year; it may have been longer.

Q. 14. Under what circumstances did this conversation take place between you and Marlow and what occasioned the remark?

Ans. I do not recollect the circumstances; I don't recollect what occasioned it.

Q. 15. Who was present besides you and Mr. Marlow when this remark was made?

Ans. I don't know.

Q. 16. Don't you know as a matter of fact that James U. Marlow dislikes Mr. Gottlieb very much on account of some matters between them in the past?

Ans. No, sir; I do not.

Q. 17. Did not Mr. Marlow's manner at the time he made the remark indicate to you a great dislike for Mr. Gottlieb?

Ans. No, sir.

Q. 18. Who is Mr. Levison?

Ans. A gentleman in the employ of the Boss clothing-house; a house that goes by that name.

Q. 19. How long has he lived in Denver?

Ans. He came here in 1867 or 1868.

Q. 20. Was he ever in your employ?

Ans. Yes, sir.

117 Q. 21. When did he make the remark that was derogatory of Mr. Gottlieb's reputation for truth and veracity?

Ans. Whenever he was questioned about it.

Q. 22. Did you ever question him about it?

Ans. Yes, sir.

Q. 23. When?

Ans. Well, say within the past 18 months.

Q. 24. How often did you question him about it?

Ans. Perhaps as often as 3 times.

Q. 25. What caused you to ask him that question?

Ans. I thought I would want to use him myself in a matter in which I was indirectly interested in.

Q. 26. What suit was that?

Ans. In suit where Gottlieb was the plaintiff and my brother was the defendant.

Q. 27. What is your brother's name?

Ans. William Trounstine.

Q. That suit was tried about *there* or four yeas ago, was it not?

Ans. Not over four.

Q. 29. Mr. Levison was in your employ at that time, was he not?

Ans. No, sir.

Q. 30. You took him into your employ after that, did you not?

Ans. No, sir.

Q. 31. Is your brother in this room at this time, William Trounstine?

Ans. Yes, sir.

Q. 32. What did Mr. Levison say about Mr. Gottlieb's reputation for truth and veracity?

Ans. That he would not believe him under oath.

Q. 33. When did W. R. Hickey speak of Mr. Gottlieb's
118 reputation for truth and veracity in your presence?

Ans. About the time that Gottlieb had some one arrested for some misdemeanor or personal matter. I don't remember what it was. It was a year ago last fall, if I'm not mistaken.

Q. 34. Was the person that Mr. Gottlieb had arrested Mr. Solomon?

Ans. Yes, sir.

Q. 35. Was it the Mr. Solomon that was in the room at this time?

Ans. Yes, sir; I believe it was.

Q. 36. What is the name of this man Solomon?

Ans. Joseph.

Q. 37. Did you not, at the time of Mr. Solomon's examination in the police court, take an active part in his defense?

Ans. Only so far as my evidence went.

Q. 38. Did you not volunteer your presence on that occasion in the police court as a witness?

Ans. Nor, sir; Judge Whittemore sent after me—duly subpœnaed.

Q. 39. Did you not on that occasion, in your cross-examination, admit that you had had some personal difficulty with Mr. Gottlieb?

Ans. Not, to the best of my recollection.

Q. 40. At what time during the progress of that trial did you have a conversation with W. R. Hickey?

Ans. After the trial.

Q. 41. What did Mr. Hickey say?

Ans. He said I swore just as he would *would* have sworn had he been called.

Q. 42. That was all he said?

Ans. Yes, sir.

Q. 43. Who is A. Jacobs?

Ans. Senior member of the firm of A. Jacobs and Company.

119 Q. 44. What relation is he to you and what business connection has he with you, if any?

Ans. Our relationship is by marriage, having married sisters, and we are partners in business.

Q. 45. When did you hear Mr. Jacobs speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. Whenever the question was asked him about the matter.

Q. 46. When did you ask him the question?

Ans. I never asked him the question.

Q. 47. Who did you hear ask him the question?

Ans. I don't know.

Q. 48. When did you hear the question asked him?

Ans. I didn't hear the question asked him, but I heard him talking about it after the question had been asked, day before yesterday.

Q. 49. Who was present when you heard this?

Ans. I was there when he was speaking of it. I don't remember anybody else being present at the time.

Q. 50. Is Mr. Jacobs to testify in this case?

Def't's counsel objects as being improper.

Ans. I think he has been subpœnaed.

Q. 51. Who is John P. Lower?

Ans. He is a merchant of this city, in the gun business.

Q. 52. Whereabouts in this city?

Ans. Blake street, between 15th & 16th, in this city.

Q. 52. Did Mr. Gottlieb formerly deal in guns, pistols, &c., as a part of his regular business?

Ans. He may have made that a part of his business.

Q. 54. With reference to the place of business of Mr. Lower, state where Mr. Gottlieb's place of business was for years past, if you know.

120 Ans. They were on the same street, diagonally opposite each other.

Q. 55. When did you hear Mr. Lower speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. As near as I can recollect, about the time of the Solomon trial.

Q. 56. When was it?

Ans. I don't recollect now.

Q. 57. Who was present at the time?

Ans. I don't know.

Q. 58. What did Mr. Lower say about Mr. Gottlieb's reputation?

Ans. That he would have given similar testimony had he been called, or words to that effect.

Q. 59. Do you mean to say that he said he would have given similar testimony to that which you gave at the Solomon trial if he had been present?

Ans. Yes, sir.

Q. 60. How did he come to say that?

Ans. I forget the circumstances any further than I have previously stated them.

Q. 61. Did he volunteer that statement without being asked to make it?

Ans. I don't recollect what the occasion was to call the statement from him.

Q. 61. What else was said in addition to that by him at that time?

Ans. Nothing bearing on this subject that I recollect of.

Q. 62. Who was present at the time Mr. Lower made the remark?

Ans. I don't recollect.

Q. 63. ——.

Question 63 & answer withdrawn by counsel of compl'ts.—J. W. Webster, examiner.

121 Q. 64. Is it not a fact that you have repeatedly from and after the time Mr. Gottlieb sued your brother spoken of Mr. Gottlieb in a harsh and bitter way and manner?

Ans. It is.

Q. 65. Is it not true that you are very unfriendly to Mr. Gottlieb, and that you have been so for years past?

Ans. Yes, sir.

Q. 66. Is it not true that on every occasion when opportunity offered during a number of years last past that you have done and said whatever you could against Mr. Gottlieb?

Ans. No, sir.

Q. 67. On what occasion have you not done and said what you could against Mr. Gottlieb when opportunity offered during the last three years?

Ans. I have been asked occasionally by business men and others as to the value of Mr. Gottlieb's commercial paper and his financial responsibility, and to all of which I have replied that he was good for his contracts—financially, I mean.

Q. 68. Are those the only occasions?

Ans. They are.

Redirect examination:

Q. 1. State whether or not during the past ten years Mr. Gottlieb's reputation for truth and veracity has been much talked of in this community among business men.

Compl't's counsel objects, because not proper re-examination and immaterial.

Ans. Yes, sir.

Q. 2. How many persons have you heard say, if any, that that reputation was good?

122 Comp't's counsel objects, because it is not proper re-examination, no part of the defendant's case, and improper in form; incompetent.

Ans. I never heard any one.

PHILIP TROUNSTINE.

Subscribed and sworn to before me this 23d day of June, A. D. 1882.

J. W. WEBSTER, *Examiner.*

By agreement of counsel the further taking of testimony in this case was continued until Saturday, the 24th day of June, A. D. 1882, at the hour of ten o'clock a. m.

J. W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Saturday, the 24th day of June, A. D. 1882, at the hour of ten o'clock a. m., the defendant produced MARKS AMTER, a witness in his behalf, who, being

by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation — the matters in controversy, deposed and testified as follows:

Q. 1. State your name, age, occupation, and place of residence.

Ans. My name is Marks Amter; age, 46 years; occupation, merchant, and reside in Denver, Arapahoe county, Colorado.

Q. 2. Do you know the parties to this suit? If so, how long have you known them?

Ans. I have known Mr. Gottlieb since spring of 1867. I don't know whether I know the defendant or not. I might have seen him, but have no particular acquaintance with him.

Q. 3. Where has the said Joseph Gottlieb resided since 1867 and in what business has he been engaged?

Ans. He has resided in Denver since 1867. He has been
123 engaged in pawnbroking business and in mercantile business.

Q. 4. Do you know his reputation for truth and veracity in this neighborhood since that time and since you have known him?

Ans. Yes, sir.

Q. 5. Is that reputation good or bad?

Ans. Rather bad.

Q. 6. From your knowledge of that reputation would you believe him under oath in a case where he has a pecuniary interest?

Compl't- counsel objects because the interrogatory is improper and not permitted to be asked in courts of justice.

Ans. I would not.

Cross-examination:

Q. 1. Mr. Amter, who did you ever hear speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. Most everybody who I was talking to in this county about Gottlieb was talking the same.

Q. 2. I repeat, who did you ever hear speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. C. M. Schayer, Louis Anfingen, Phillip Holzman, and many others.

Q. 3. State the names of all persons whom you have heard speak of the reputation of Mr. Gottlieb for truth and veracity in addition to those persons you have already named.

Ans. I cannot name any more. I don't know their names personally except one—Isaac Davidson.

Q. 4. When did you hear Mr. Schayer speak of Mr. Gottlieb's reputation for truth and veracity and where?

Ans. We was talking most all the while about one thing or another for the last six or eight months in Denver about Gottlieb.

Q. 5. How often have you heard Mr. Schayer speak of Mr.
124 Gottlieb's reputation for truth and veracity?

Ans. About 100 times, maybe, since the last ten years.

Q. 6. When was the first of those 100 times?

Ans. In 1868 & '69. I think in 1868.

Q. 7. Where were you at that time, at what particular place, and who was present?

Ans. I was at Mr. Schayer's house and Mrs. Schayer was present; maybe others, but I don't remember.

Q. 8. Where did Mr. Schayer live at that time—what part of the city?

Ans. On Blake street when I first got acquainted with him, and the next place on 15th street.

Q. 9. At the time you had this first interview did he live on Blake or 15th street?

Ans. On Blake.

Q. 10. How is it that you remember so distinctly this first interview when Mr. Schayer spoke of Mr. Gottlieb's reputation?

Ans. I had some business with Mr. Gottlieb at the time, and he tried to lie to me.

Q. 11. Did you have some difficulty with him at that time?

Ans. No, sir.

Q. 12. When did you next hear Mr. Schayer speak of Mr. Gottlieb's reputation?

Ans. In 1868 or '69.

Q. 13. Who was present then?

Ans. I think Mr. Nathan, the old gentleman; I don't remember anybody else being present.

Q. 14. When did this interview take place?

Ans. It was on 15th street, on Mr. Nathan's property.

Q. 15. When did you next hear Mr. Schayer speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. I heard him maybe over six months, every little
125 while. I can't tell how often.

Q. 16. When was it?

Ans. I can't tell positively.

Q. 17. When did you hear Louis Anfingen speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. For the last three years—six months ago.

Q. 18. Where was it?

Ans. In Denver, in his office.

Q. 19. Was that the first time you heard him speak of it?

Ans. No, sir.

Q. 20. When did you first hear him speak of it, and where?

Ans. I guess about two years ago, at C. M. Schayer's house.

Q. 21. How often in all did you ever hear Louis speak of it?

Ans. Ten or fifteen times, maybe.

Q. 22. How did you come to talk with Louis Anfingen so often about it?

Ans. He was trying to beat me out — year ago of one black suit of clothes.

Q. 23. Do you mean to say by that that you and Mr. Gottlieb both claimed the clothes?

Ans. No, sir; we did not; they were my own clothes, left there to be taken care of.

Q. 24. How long ago was it that he was trying to beat you out of this suit of black-cloth clothes?

Ans. In the summer of 1868.

Q. 25. Where does Philip Holzman live?

Ans. El Moro now.

Q. 26. When and where did you hear Mr. Philip Holzman speak of Mr. Gottlieb's reputation for truth and veracity, and who was present at the time?

126 Ans. He was in Denver at the time, in the summer of 1868. He was my partner then. I don't remember that anybody was present.

Q. 27. How often did you hear Philip Holzman speak of Mr. Gottlieb's reputation?

Ans. About five or ten times, I suppose, as near as I can remember it.

Q. 28. About what time did these conversations of Mr. Holzman take place?

Ans. The first time was in the summer of 1867; the next was 1868, in the summer.

Q. 29. When was the third time you heard Mr. Holzman speak of Mr. Gottlieb's reputation?

Ans. About 1870; some time in the spring.

Q. 30. When was the fourth and fifth times?

Ans. Fourth about a year ago, and *and* the fifth about three months ago; that was the last.

Q. 31. What caused Mr. Holzman to speak of Mr. Gottlieb's reputation?

Ans. He was acquainted with him.

Q. 32. But there must have been some reason for his expressing himself in that way. State what it was.

Ans. There was no reason; just natural to their acquaintances.

Q. 33. When did you hear Isaac Davidson speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. About 4 years ago.

Q. 34. Were not Isaac Davidson and Mr. Gottlieb competitors in the pawnbroking business in the city of Denver within a few doors of each other at that time?

Ans. Yes, sir.

Q. 35. Do you not know as a fact, Mr. Amter, that Mr. Davidson and Mr. Gottlieb about that time were bitter enemies, and that the trouble between them had almost, if not quite, caused a per-

127 sonal encounter between them?

Ans. Yes, sir.

Q. 36. Now, Mr. Amter, is it not a fact that from 1868 to the present time you have been very unfriendly towards Mr. Gottlieb on account of a difficulty between you and him about a suit of clothes in 1868?

Ans. Yes, sir.

Q. 37. Mr. Amter, is it not a fact that at a meeting of Israelites, at which you presided and Mr. Gottlieb was present, that you ever threatened, either at that meeting or the next day after the meet-

ing, on account of feeling engendered at that meeting, to shoot Mr. Gottlieb?

Ans. No, sir.

Q. 38. Is it not a fact, now, Mr. Amter, that whenever opportunity offered from 1868 to the present time you have tried to impress upon C. M. Schayer, Louis Anfinger, and others that Mr. Gottlieb was a man whose reputation for truth and veracity was bad?

Ans. Yes, sir.

Q. 39. Is it not a fact that from 1868 to the present time, irrespective of what others might say, on account of the difficulty between you and Mr. Gottlieb you have been ready to say at all times that Mr. Gottlieb's reputation for truth and veracity was bad?

Ans. Not on account of any difficulty at all.

MARKS AMTER.

Subscribed and sworn to before me this 24th day of June, A. D. 1882.

J. W. WEBSTER, *Examiner.*

128 The defendant also produced LEWIS C. THATCHER, a witness in his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. 1. Who was your agent in looking after the property in question in this case after your brother's death?

Ans. William S. Baker, of Denver, Colorado.

Q. 2. Were you present at the execution sale under the Kaucher judgment some time in February, 1878?

Ans. I was not.

Q. 3. When did you first hear of the complainant, Joseph Gottlieb, and when did you first know that he had any claim against your brother?

Compl't's counsel objects as incompetent and immaterial.

Ans. I believe it was on or about the 13th day of February, 1879. It may have been a day or two after that that I knew of his claim.

Q. 4. How long before he began the said attachment suit against your brother did you know that he had any claim against your brother and state what it was that brought it to your knowledge?

Ans. It might have been some several months after the purchase of the property by me that I was made aware of Mr. Gottlieb's claims from the fact that he had attached moneys for rents that was due me in the hands of J. Cook, Jr., & Co., real-estate agents here.

Compl't's counsel objects that the answer is immaterial & incompetent and not responsive to the question.

Q. 5. Did you hear the testimony of the said Joseph Gottlieb in this case?

Ans. I heard a part of it only.

Q. 6. Did you heard that part of it which related to certain
129 conversations with you at the American house, the Occidental hall, and elsewhere in Denver and in St. Louis, Missouri?

Ans. I heard a part of it.

Q. 7. Did you hear him testify that, to the best of his recollection, he never talked with you of his claim against your brother or about the matters in controversy in this suit until after your brother's funeral? If so, state whether that evidence was true or not.

Compl't's counsel objects for the reason that the witness Gottlieb gave no such testimony in his direct examination; further that he gave no such testimony in his cross-examination, and if he did so testify on his cross-examination it was new matter called out by the def't, and it is incompetent to contradict him upon that point, and the testimony is generally incompetent and immaterial.

Ans. It was not true.

Q. 8. When and where did you first meet Joseph Gottlieb and under what circumstances?

Ans. I first met Mr. Gottlieb to know him at the American house in Denver on the evening of the 13th of February, 1879. The circumstances connected with that meeting—I was brought or rather came here to Denver to bury my brother, who died, I believe, on the 9th of the same month. After having seen my brother at the undertaker's and on my return to the hotel I asked the clerk of the hotel to please give me the key to my room. He did so, and at the same time handed me a piece of paper that had been filed away in the same pigeon-hole with the key, and while reading this paper at the counter a gentleman came to me and asked me if my name was Thatcher. I answered that it was. He then told me that he was Mr. Gottlieb.

130 Q. 9. State the conversation, if any, which took place then and there between you.

Ans. Mr. Gottlieb then said to me that he would like to have a little confidential talk. I said, Yes, but on looking around where I was standing I saw a number of gentlemen in the office. I failed to recognize any one then that I knew, and I said to him that if the conversation was to be confidential that he had better go up into my room with me and have this talk. He did so. We took seats at the table. I then asked him what he wanted to talk about. He said that it was in relation to the property that I had purchased from my brother. I told Mr. Gottlieb that I was in no frame of mind or condition to talk about these things; that I had come to Denver to bury my brother and not for his blood, and I hoped that he would spare my feelings and please allow me to bury him undisturbed about these matters. He says, Well, I just come to tell you about it, and I decline to talk about it any further, but told him that I would be in Denver a couple of weeks and during that time we might meet. It appeared to be satisfactory to him then, and he allowed me to bury my brother in peace.

Q. 10. Did you tell him in that or any other conversation that you didn't come to Denver to get any property or to gobble any

money, or words to that effect, or did you make to him any statement to that effect?

Compl't's counsel objects that the question calls for a contradiction of testimony called out upon the cross-examination, which was new matter, and that it is immaterial and incompetent.

Ans. To the best of my recollection, I never did.

Q. 11. Did you say to him in that or any other conversation that you knew nothing about the property; that your brother and
131 Hunt wrote you letters and advised you to buy such property as they described to you and forward notes for the same; that you simply did as they advised you to do; that you didn't care anything for property nor money or valuables? Did you make those statements or either of them or any to that effect to Mr. Gottlieb?

Compl't's counsel objects for same reasons last above stated.

Ans. I made no such remarks to Mr. Gottlieb nor any other man on earth.

Q. 12. Is this paper, Exhibit 2, the one which you have just referred to in stating the circumstances which let to that interview?

Compl't's counsel objects because incompetent and immaterial.

Ans. It is.

Q. 13. What, if anything, was said in that interview about that paper?

Ans. After Mr. Gottlieb had introduced himself to me I said, You are the Mr. Gottlieb referred to in this little note handed me by the clerk of the American hotel? and I told him that I had just read it. He looked at it himself and said it was.

Q. 14. What, if anything, was said as to who sent it to you or who left it there for you?

Ans. Mr. Gottlieb said that he had left it.

Defendant's counsel now offer Exhibit 2 in evidence as a part of Mr. Thatcher's testimony.

To which counsel for compl'ts objects for the reasons last above stated and for the further reason that it has not yet been shown that it was signed or written by the complainant.

Q. 15. When and where was the next conversation had
132 between you and Mr. Gottlieb?

Compl't's counsel objects as incompetent and immaterial.

Ans. The time when the conversation was held was a day or two after I buried my brother, in the Occidental hall, corner of 15th and Blake streets, city of Denver, State of Colorado.

Q. 16. What was that conversation?

Compl't's counsel objects as incompetent and immaterial.

Ans. Mr. Gottlieb sought me out, so he said, to talk to me about the property now involved in this suit, representing that he held claims against it which might at least jeopardize my interest in the

property, and he wanted to know if we could not come to some amicable adjustment of our interests, and I told Mr. Gottlieb that I did not recognize him as having any interest in the property whatever; hence there was nothing to settle. He then told me that he would collect this claim against the property if he had to carry this case to the Supreme Court of the United States. He said to me then that he was rich and that I was poor, and that he would wear me out in the courts. He then said *to* that he had a plenty of this world's goods, and I then said to him if that was true, in heaven's name "why did he carry on this persecution?" He said, "Oh, it's my rights." I then told him that I would continue to defend and protect this interest of mine as long as I had a dollar or was able to earn one, and if that failed, I would turn the whole, entire affair over to some honest man, who would go to Washington with him, should I have to leave my dead body on the way. Mr. Gottlieb then said, "That the estate or the property in controversy was valuable and he was willing to cut it in two and give me the half of it." I declined his generous proposition; then he said that it looked to him very much like a nice piece of meat with a bone in it, and he said that to continue the litigation, that the lawyers
133 engaged on both sides of this question would eat up all the meat. He then said that there would be nothing but the bone left. I then asked him if he would give me half of the bone. He then said, Well, I don't suppose it is worth while for us to talk any further, as we would be unable to come — any compromise. I told him I believed that that was so, as I had no compromise to make.

Q. 17. When and where did the next conversation between you and Mr. Gottlieb take place and state what was said, if anything, in relation to the matters in controversy in this suit?

Compl't's counsel objects as incompetent and immaterial.

Ans. In front of number 8 South Commercial street, in the city of St. Louis and State of Missouri, some time in April or May, 1880. I was called upon at that place by Mr. Gottlieb and Mr. Bierman. I knew Mr. Bierman and Mr. Gottlieb. Mr. Bierman said to me, in the presence of Mr. Gottlieb, that Mr. Gottlieb had told him of the difficulty that existed between Mr. Gottlieb and me, and he, knowing me to be a gentleman, came over with Mr. Gottlieb to see if some arrangement couldn't be made to stop this litigation. He then renewed the proposition to cut it in two. I declined for the same reasons I did before. He then made the same remarks about his opulency, wealth, and riches and my extreme poverty, and he advised me that it would be for my best interest to accept it, and, if I did not, that he would keep this suit in court as long as there was a court door open that would let him in. I told Mr. Gottlieb that I didn't doubt what he said in that matter, but that I would continue to protect and defend my interests as long as I was able to, and when I could no longer defend it I expected I would have to fall by the wayside.

Q. 18. Are those all the conversations that you have had with Mr. Gottlieb relating to that matter?

134 Ans. It occurs to me now that these are all the conversations I ever had with Mr. Gottlieb.

Q. 19. You stated in your examination on behalf of the complainant that you are the grantee mentioned in a certain warranty deed executed by Samuel H. Thatcher, bearing date the 13th day of November, 1876, which conveyed to you the property in controversy in this case, and that you gave your promissory notes to Samuel H. Thatcher in payment of the purchase price. Have those promissory notes been paid; and, if so, who paid them?

Compl't's counsel objects because the question calls for the witness to state or assume what is matter of law as to the effect of the deed to him from Samuel H. Thatcher and because the evidence called for is incompetent and immaterial.

Ans. They have been paid and I paid them.

Q. 20. With whose money were they paid?

Compl't's counsel objects as incompetent and immaterial.

Ans. Mine.

Q. 21. Upon payment of those notes to whom were they surrendered and delivered?

Compl't's counsel objects for same reasons last above stated.

Ans. To me.

Q. 22. Who has received the rents and profits of the property in controversy since the 13th day of November, 1876, if you know?

Complainant's counsel objects as incompetent and immaterial.

Ans. Well, I am not so clear who got the rents from 1876—that is to say, immediately for a few months thereafter from the time of purchase. I wrote to Mr. J. Cook, Jr., & Co. to send me a statement of the accounts of rents, they being the agents for the prop-

135 erty on Arapahoe street. They sent me a statement along with bills for repairs, painting, bricklaying, and for fixing the hydrant and their own charges as commission, and if my memory serves me right that it showed they had sixty dollars in money due me less these charges just enumerated, leaving a balance, I believe, of about $40 *dollars*. I then wrote them to send me the money. They told me that Mr. Gottlieb had attached it, and I have never heard any more of it. Not having heard from Mr. J. Cook, Jr., & Co. further, I supposed that the house went unoccupied.

Compl't's counsel objects for the reason that it is irresponsive to the question, is volunteer testimony, and that in part it gives by parol what is in writing, and that it is incompetent and immaterial, particularly so far as it undertakes to detail correspondence or transactions between the defendant and his agent.

Q. 23. At the time you purchased that property from your brother,

what knowledge had you, if any, of the execution of Joseph Gottlieb or of his said claims against your brother?

Compl't's counsel objects as incompetent and immaterial.

Ans. I don't think I had ever heard of such a man or of his claims.

Cross-examination:

Q. 1. How many times before the present time have you visited Denver and when?

Ans. It was February 13th, 1879, and early in the beginning of the year 1880. I think perhaps it was in March.

Q. 2. Have you got the notes that you gave in consideration of the purchase of this property of your brother?

Ans. I have one note. The other one is unfortunately destroyed—burned up with some papers accidentally.

136 Q. 3. Will you produce the one you have?

Ans. I will.

Here witness produces paper hereto attached and marked Exhibit 3 as a part of the evidence in this cause.

Q. 4. Can you describe — by giving the date and the amount of the note which you say is destroyed, together with the date when it fell due, either by independent recollection or by reference to the note which is now produced? And, if so, describe it in those respects.

Ans. The note was for two thousand dollars, due on the 13th day of November, 1878. It was dated November 13th, 1876.

Q. 5. When and by whom were those notes respectively delivered to you?

Ans. I got the first note from my brother; I don't know just how long, but it was some time after the Kaucher sale; the other I got from A. Jacobs & Co. about the time of my brother's death, which occurred in 1879.

Q. 6. Before or after the time it fell due?

Ans. Before it fell due.

Q. 7. In answer to direct interrogatory 22 you say that J. Cook, Jr., & Co. sent you an account of rents, &c., connected with this property. Will you produce that account which they sent you?

Ans. I will.

(Here witness produces a paper hereto attached, marked Exhibit 4, and is made a part of the evidence in this case.

LEWIS C. THATCHER.

Subscribed and sworn to before me this 24th day of June, A. D. 1882.

J. W. WEBSTER, *Examiner.*

Defendant's counsel reserves the right to recall Lewis C. Thatcher at any time before the defendant's testimony closes under the rule.

137 By agreement of counsel the taking of testimony in this cause is continued until Monday, the third day of July, A. D. 1882, at the hour of ten o'clock a. m., and that the complainant may have from then until the tenth day of July to introduce any testimony he may desire.

J. W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Monday, the third day of July, A. D. 1882, at ten o'clock a. m., the counsel being present and consenting thereto, the taking of further testimony was continued until Thursday, the sixth day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver.

J. W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Thursday, the sixth day of July, A. D. 1882, at the hour of ten o'clock a. m., the counsel being present and consenting thereto, the taking of further testimony was continued until Wednesday, the 12th day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver.

J. W. WEBSTER, *Examiner.*

Pursuant to the foregoing coutinuance, this Wednesday, the 12th day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver, the counsel of the respective parties being present and consenting thereto, the further taking of testimony was continued until Thursday, the 13th day of July, A. D. 1882, at ten o'clock a. m.

JOHN W. WEBSTER, *Examiner.*

138 Pursuant to the foregoing continuance, this Thursday, the 13th day of July, A. D. 1882, at ten o'clock a. m., at my office, counsel being present, the further taking of testimony was continued until Monday, the 17th day of July, A. D. 1882, at ten o'clock a. m., *the counsel being present.*

Defendant produced WILLIAM TROUNSTINE, a witness on his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is William Trounstine; age, 30 years; occupation, merchant, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb; if so, how long have you known him, and where has he resided during that time?

Ans. Yes, sir; I know him. I have known him about 8 or 10 years, and he has resided in Denver most of the time.

Q. Do you know the reputation of the said Joseph Gottlieb in that community for truth and veracity, and in particular among his acquaintances in the neighborhood where he dwelt during that time?

Ans. Yes, sir.

Q. Is that reputation good or bad?

Ans. Bad.

Q. From your knowledge of that reputation would you believe him under oath in any case where he has a pecuniary interest at stake?

Compl't's counsel objects because that it is improper and not allowable under the rules of evidence.

Ans. I would not.

Cross-examination:

Q. Mr. Trounstine, who did you ever hear speak of Mr. Gottlieb's reputation for truth and veracity? Mention all the names
139 of the persons whom you have heard speak of his reputation for truth and veracity.

Def't's counsel objects because it calls for confidential communications and the names of parties which it would be a breach of confidence in the witness to communicate.

Ans. I have heard a great many. I don't feel at liberty to mention the names of the parties that I have heard speak of his reputation for truth and veracity.

Q. Please mention the name of some person whom you heard speak of Mr. Gottlieb's reputation for truth and veracity.

Def't's counsel object for same reason last above stated.

Ans. I don't feel at liberty to state who they were or give their names.

Q. Do you positively decline to give the name or names of any person or persons whom you have heard speak of Mr. Gottlieb's reputation for truth and veracity?

Def't's counsel objects as an attempt to compel the witness to disclose privileged communications which the witness is not obliged to give except under an order of the court, and because not proper cross-examination.

Ans. Yes, sir.

Q. Were these statements made regarding Mr. Gottlieb's reputation for truth and veracity as confidential communications to you alone, or were they made in general conversation in the presence of others without any injunction by the parties making them to you to regard them as confidential?

Ans. They were confidential; I was alone; there were no others parties present.

Q. Did the party or parties making these statements regarding Mr. Gottlieb's reputation for truth and veracity enjoin upon
140 you at the time to tell no one what was said?

Def'ts' counsel object because not proper cross-examination and because it is immaterial whether the party enjoined secrecy or not and because the witness cannot be compelled to state what others

say to him concerning a third party, and, 3d, because it calls for hearsay evidence and not what the witness knows.

Ans. I don't remember whether they did or not.

Q. Did they at the time of making these statements regarding Mr. Gottlieb's reputation tell you not to disclose their names?

Def't's counsel objects for reasons last above stated.

Ans. I do not remember.

Q. Where was it that you heard a statement made by any person regarding Mr. Gottlieb's reputation for truth and veracity and when was it?

Ans. At different places; in Denver within the last three years.

Q. Is that as definite as you can be regarding the time and place where and when you heard such statement? And, if not, state specifically the time and place.

Ans. Yes, sir.

Q. Mr. Trounstine, have you not had some personal difficulty with Mr. Gottlieb regarding a suit brought by him against yourself?

Ans. Yes, sir.

Q. Is it not a fact that from the time that suit was brought against you by Mr. Gottlieb you have availed yourself of every favorable opportunity to speak against Mr. Gottlieb?

Ans. No, sir.

Q. Is it not a fact that you have at various times since that suit was brought against you by Mr. Gottlieb tried to impress upon parties with whom you have met that Mr. Gottlieb was a man of bad reputation for truth and veracity?

141 Ans. No, sir.

Q. You mean to say from this that you have not since that suit was brought against you by Gottlieb told parties in your presence that Mr. Gottlieb was a man whose reputation for truth and veracity was bad?

Ans. No*r*, sir.

Q. Have you not since that suit was brought by Gottlieb against you, as often as opportunity offered, stated in the presence of others that Mr. Gottlieb's reputation for truth and veracity was bad, or made substantially that statement?

Ans. I have not.

Q. How often since that suit was brought against you by Gottlieb have you stated in the presence of others in substance that Mr. Gottlieb's reputation for truth and veracity was bad?

Ans. I don't remember.

Q. Tell about how many times as near as you can.

Ans. I don't remember.

Q. In whose presence did you say it?

Ans. I do not recollect.

Q. Is it not a fact that since Gottlieb brought that suit against you you have been very unfriendly toward him?

Ans. No more so than before.

Q. When did you first become unfriendly to Mr. Gottlieb?

Def't's counsel objects because it assumes that he is unfriendly, a fact which has not been proven.

Ans. I never was on very intimate terms with him.

Q. Is it not a fact that from the time the suit was brought by Gottlieb against you you have failed to recognize him or speak to him when you meet or have met, and that before the suit was brought you did speak to him from time to time when you met?

142 Ans. No, sir.

Q. Are you a brother of Philip Trounstine?

Ans. Yes, sir.

Q. Are you connected with the business firm of A. Jacobs & Co., of which Mr. Philip Trounstine is a partner?

Def't's counsel objects because immaterial.

Ans. I am in the employ of A. Jacobs & Co.

Q. Complainant here rests the further examination of this witness, except as to the matters which he has refused to answer, herein noted, and as to those matters asks that the matters be certified to the court.

Re-examination:

Q. How general in this community during the past three years has the reputation of the said Joseph Gottlieb for truth and veracity been the topic of conversation?

Counsel for compl't objects because it is not proper re-examination and the witness has not shown by his cross-examination any knowledge that would enable him to answer it.

Ans. It has been very general.

WILLIAM TROUNSTINE.

Subscribed and sworn to before me this 17th day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's counsel now produces ROBERT S. WILSON, a witness, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

143 Q. State your name, age, occupation, and place of residence.

Ans. My name is Robert S. Wilson; age, 55 years; occupation, auctioneer, &c., commissioner, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb; if so, how long have you known him and where has he resided during that time?

Ans. I do know him; probably have known him about 14 or 15 years, and with the exception of about one year he has resided in Denver during that time.

Q. Do you know what the reputation of said Joseph Gottlieb is for truth and veracity in the said city of Denver and in particular among his acquaintances in the neighborhood where he resides?

Ans. No.

Q. Do you know the reputation of the said Joseph Gottlieb for truth and veracity in the said city of Denver?

Ans. I don't think I know what the general opinion of the community is.

Q. Have you heard the complainant's reputation for truth and veracity discussed among his acquaintances in the said city of Denver; if so, how frequently?

Compl't's counsel objects because it is not a proper question in an examination upon this subject and should be asked only as to what the witness knows as to the general reputation of the complainant where he is best known; 3d, because the witness has shown by his answer to the former questions that he does not know what the general reputation of the complainant is where he is best known as to truth and veracity.

Ans. I have on a number of occasions.

144 Q. Please state, from what you know of that reputation and from what you have heard said about it among his acquaintances, whether that reputation is good or bad.

Compl't's counsel objects because the question is improper, because it couples with it more than is allowable to be asked under the rules of evidence; also because no proper foundation has been laid showing that the witness is qualified to answer it.

Ans. In these discussions it was decidedly bad.

Q. Please state whether, from your own knowledge of that reputation, it is good or bad.

Compl't's counsel objects that it is improper and not allowable under the rules of evidence.

Ans. I shall not answer it.

Q. From your knowledge of that reputation, would you believe said Joseph Gottlieb under oath in case where he has a pecuniary interest at stake?

Compl't's counsel objects as improper under the rules of evidence; also because no proper foundation has been laid showing that the witness is qualified to answer.

Ans. If I were a juryman on such a case I should touch that part of the evidence very tenderly.

Cross-examination:

Q. Mr. Wilson, name all the persons whom you have heard speak of Mr. Gottlieb's reputation for truth and veracity.

Def't's counsel objects because it is not proper cross-examination.

Ans. That would be impossible for me to do.

Q. Name all the persons whom you now remember to have heard speak of Mr. Gottlieb's reputation for truth and veracity.

145 Def't's counsel objects for same reasons last above stated.

Ans. I cannot do it.

Compl't's counsel objects to the answer because by changing it from shall not to cannot at the instance of counsel for defendant shows a disposition on the part of witness and counsel to evade the question and prolong the examination.

Q. State the manner of all persons that you can whom you remember to have heard speak of Mr. Gottlieb's reputation for truth and veracity.

Def't's counsel objects for same reasons last above stated.

Ans. I will not state them, for the reason that I am informed that at least two of them are under obligations to him and have requested me not to name them.

The complainant's counsel now asks that the further examination of this witness be suspended until the matter can be reported to the judge of United States court and his decision can be had thereon whether the two witnesses examined to-day, viz., William Trounstine and Robert S. Wilson, shall answer the last questions propounded to them as above set forth further than they have already answered; to which the counsel for def'ts objects to a suspension of the cross-examination of this witness except as to the question and answer in controversy between the counsel and witness, and insists that the cross-examination must proceed or be waived as to all other matter, and it is hereby continued by your examiner for the purpose of reporting the same to the court for decision thereon until to-morrow, Tuesday, the 18th day of July, A. D. 1882, at the hour of two o'clock p. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

146 Pursuant to the foregoing continuance this Tuesday, the 18th day of July, A. D. 1882, at two o'clock p. m., counsel being present and your examiner having heard the decision of the judge in this matter rendered informally in the presence of plaintiff's counsel, plaintiff's counsel proceeded with the cross-examination of ROBERT S. WILSON, begun on yesterday, who deposed and testified as follows:

Q. Is it not a matter of fact, Mr. Wilson, that you have on various occasions expressed yourself in the presence of others that you disliked Mr. Gottlieb, the complainant?

Ans. Yes, sir.

Q. Have you not stated to parties about as often as opportunity offered that Gottlieb had on two or more occasions mistreated you, or words to that effect?

Ans. Not as often as opportunity offered, but I have on two or three occasions made that statement; but it was drawn out of me; it was not voluntary.

Q. Who drew it out of you?

Ans. I can't state now, except with one, whose name I think I have no right to use at present.

Q. Did that person come to see you with reference to this examination or the testimony you would give here?

Ans. No, sir; it was before this examination was thought of.

Q. Have you not in talking to parties about Mr. Gottlieb expressed these words: "I don't like the damned son of a bitch"?

Ans. I have.

Q. Will you state the name of any party whom you have heard speak against the reputation of Mr. Gottlieb for truth and veracity, exclusive of the two whom you say in your previous examination requested you not to divulge their names?

Ans. I will not, unless so ordered by the judge of the United States circuit court.

147 Q. Did Philip Trounstine speak in your presence of Mr. Gottlieb's reputation for truth and veracity?

Ans. I don't remember.

Q. Was William Trounstine one of the parties whom you heard speak of Mr. Gottlieb's reputation?

Ans. I think not.

Q. Was M. Amter one of the parties whom you heard speak of Mr. Gottlieb's reputation?

Ans. I think not, sir.

Q. Were these communications or discussions regarding Mr. Gottlieb's reputation for truth and veracity had with you alone or in the presence of others?

Ans. Sometimes they were single-handed, and sometimes there were three or four people.

Q. How often were they single-handed and how often were they in the presence of others besides yourself and others, besides those making them?

Ans. A number of times; cannot state how many.

Q. When was the first of these that you remember of?

Ans. Ten years ago.

Q. Who was present at that time besides yourself?

Ans. I remember one man well, William A. Smith.

Q. Was not this man William A. Smith a deputy sheriff at the time?

Ans. He was an officer, but I think he was a policeman or city marshal.

Q. You don't remember who else was present at the time?

Ans. I do not.

Q. Did Smith do the talking on that occasion or did you?

Ans. I did no talking on that occasion at all.

148 Q. When did the next conversation occur that you remember of regarding Mr. Gottlieb's reputation?

Ans. There has been so many of them that it is impossible for me to tell time and place.

Q. Then do you mean by your last answer that you do not remember any time or place when you heard another conversation regarding Mr. Gottlieb's reputation?

Ans. I mean that I can't fix certain dates, but remember a great many places where such conversations took place.

Q. Were these conversations by men who generally liked Mr. Gottlieb or were they men unfriendly to him, like yourself?

Ans. I have no means of knowing whether they were friendly or unfriendly.

Q. Did they generally take place in the place where you were doing business?

Ans. No, sir.

Q. Is it not a fact that Mr. Gottlieb holds a judgment against you for $500, more or less, in the county court of Arapahoe county?

Ans. I was not aware of it, sir.

Q. How early did these matters occur or about what date that you feel aggrieved at against Mr. Gottlieb?

Ans. About ten years ago.

Q. You have harbored this feeling from that time until the present?

Ans. That is my own business.

Q. That difficulty between you and Mr. Gottlieb was caused by an attempt on his part to collect some money of you that you owed him, was it not?

Ans. Well, he had a chattel mortgage on my household goods
that was due on Monday. I saw him Saturday and told him
149 that I would be there by 12 o'clock with the money. He said
that was all right. I came down Monday morning to get the money and got A. J. Williams' check for $200 and started for Mr. Gottlieb's store, and on the road met Mr. W. A. Smith, then constable, who told me that he had been up to my house with Mr. Gottlieb for the purpose of taking my furniture out of the house, and when he found whose house it was and whose furniture he declined having anything to do with it until he saw me. I showed him the check and told him I was on the road to settle it.

Compl't's counsel objects to answer as not responsive to the question.

Q. Col. Wilson, state about how many times you have taken occasion to speak during the year since you first had a difficulty with Mr. Gottlieb to others about Mr. Gottlieb's reputation.

Ans. Well, sir, I can't tell you how many times.

ROB'T S. WILSON.

Subscribed and sworn to before me this 18th day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

DENVER, *July* 18, 1882.

Received of defendant's counsel, fees as witness $3 30
And of compl't's counsel 1 65

$4 95

ROB'T S. WILSON.

Defendant's counsel also produces FREEMAN F. HILL, a witness in his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.
150 Ans. My name is Freeman F. Hill; age, 40; occupation, watchmaker and jeweler, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Mr. Gottlieb? If so, how long have you known him and where has he resided during that time?

Ans. I know him. I have known him about three years, and he has resided in Denver during that time.

Q. Do you know his reputation for truth and veracity in the said city of Denver?

Ans. As far as I have any knowledge I know it.

Q. Is that reputatien good or bad?

Compl't's counsel objects, because no proper foundation has been laid for asking the question of this witness.

Ans. I should say bad.

Q. From your knowledge of that reputation would you believe him under oath in a case where he has a pecuniary interest at stake?

Ans. I am not sufficiently acquainted to give a decisive answer.

Cross-examination:

Q. Mr. Hill, how many persons in all do you *how* remember to have heard speak against Mr. Gottlieb's reputation for truth and veracity and name them?

Ans. J. Solomon; Heitler—I forget his initials, but he is J. Solomon's partner. I cannot name any others. I have heard several make remarks of a similar nature.

Q. Were there others who made remarks of which you speak in the last answer present at the time you heard J. Solomon and Mr. Heitler speak?

Ans. No, sir.

Q. Is it not a fact that Mr. Solomon, to your knowledge, had a personal difficulty with Mr. Gottlieb, and that he was arrested
151 at Mr. Gottlieb's instance?

Def't's counsel objects, because it is not proper cross-examination.

Ans. I am not aware of the fact.

Q. Do you not know that Mr. Solomon, just prior to the time you

heard him speak of Gottlieb, had a business difficulty with Mr. Gottlieb?

Def't's counsel objects for the same reasons last above stated and immaterial.

Ans. My impression is that he had.

Def't's counsel objects to the answer as not responsive.

Q. Do you not know that Mr. Solomon was arrested for assaulting Mr. Gottlieb?

Ans. I do not.

Q. Do you mean to say that you now have no recollection of any others persons than Solomon and Heitler who spoke against the reputation of Mr. Gottlieb?

Ans. I have a recollection, but I can't recall their names.

Q. Now, Mr. Hill, is it not a fact that some three years ago or less Mr. Gottlieb brought some Swiss watches to you to repair, and that afterward he took them to your brother because you did not repair them successfully, and that because he would not pay you your bill you entertained at that time and still an unfriendly feeling toward Mr. Gottlieb?

Ans. Not to my knowledge. I entertain no ill feeling against Mr. Gottlieb on that account or any other.

Q. Where were these parties when they spoke of Mr. Gottheb's reputation for truth and veracity?

Ans. In Mr. Solomon's store.

F. F. HILL.

152 Subscribed and sworn to before me this 18th day of July, A. D. 1882.

J. W. WEBSTER, *Examiner.*

Defendants also produce JOSEPH SOLOMON, a witness in his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Joseph Solomon; age, 42 years; occupation, a merchant, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Mr. Gottlieb; and, if so, how long have you known him?

Ans. About five years.

Q. Where has he resided during that time?

Ans. All that time in Denver.

Q. Do you know what his reputation is for truth and veracity in the said city of Denver?

Ans. I do know it.

Q. Is that reputation good or bad?

Ans. Bad.

Q. From your knowledge of that reputation would you believe him under oath in a case where he has money at stake?

Compl't's counsel objects because it is an improper question to be asked the witness; it calls for an opinion of the witness.

Ans. No.

Cross-examined:

Q. Mr. Solomon, who did you hear speak against Mr. Gottlieb's reputation for truth and veracity?

153 Ans. I. Davidson, M. Schwartz, J. or M. Foster, a gentleman by the name of Tishler, A. Jacobs, Philip Trounstine, and his own sister—I don't know her name—& his brother-in-law. I can't remember any more at present.

Q. Now, Mr. Solomon, do you not know that Mr. Davidson had a personal difficulty with Mr. Gottlieb a few years ago?

Def't's counsel objects; not proper cross-examination.

Ans. I don't know that.

Q. What is the business of this Mr. Foster?

Ans. He keeps a fruit store, feed, cigars, &c.

Q. How long ago was it that you heard Mr. Foster speak of Mr. Gottlieb's reputation?

Ans. Some time ago; I can't recall the time.

Q. How often did you hear him speak of Gottlieb's reputation?

Def't's counsel objects because immaterial.

Ans. As many times as his name was mentioned.

Q. Did Mr. Foster seem to be angry with Mr. Gottlieb about anything, and had he not just previously been living in Mr. Gottlieb's house?

Ans. I don't know; he never mentioned to me that he lived in Gottlieb's house. He did tell me that Gottlieb offered him and his wife $100 to do some dirty trick; I don't know what.

Def't's counsel objects to last part of the answer as not responsive.

Q. Did this man M. Schwartz formerly work for Mrs. B. Davidson, the wife of I. Davidson?

Ans. Yes, sir.

Q. Do you not know from what the man Schwartz told you or from your own knowledge that Mr. Gottlieb caused the man Schwartz to be arrested and fined?

Ans. No, sir.

Q. Where is the man Tishler whom you speak of?

154 Ans. I think he resides in Georgetown.

Q. How often did you hear him speak of Gottlieb's reputation?

Ans. Several times.

Q. Did it not arise from a little difficulty that he had with Mr. Gottlieb over a business transaction?

Ans. I think it was.

Q. Mr. Solomon, do you not know as a matter of fact from statements made by them that A. Jacobs and Phil. Trounstine are both enemies of Mr. Gottlieb?

Ans. I don't know that.

Q. You yourself some two or three years ago had a difficulty with Mr. Gottlieb, did you not?

Ans. Yes, sir.

Q. Did you not assault him on the street or have a clinch with him at about that time?

Ans. Yes, sir.

Q. You have ever since been an enemy of his, have you not?

Ans. No enemy and no friendship.

Q. Have you not on every favorable occasion since you had the difficulty with Mr. Gottlieb spoken against Mr. Gottlieb's reputation?

Ans. Whenever I was asked I did.

Q. Do you mean to say by your last answer that in the presence of others, whether asked or not, on every favorable opportunity you have not spoken against Mr. Gottlieb's reputation?

Ans. Whenever the name was mentioned I said what I know.

Q. Before that difficulty with Mr. Gottlieb you were not accustomed, were you, to speak against Mr. Gottlieb's reputation?

Ans. I did not, but I did know his reputation was bad then.

Compl't's counsel objects to the last clause of the answer of witness and moves it be stricken out.

155 Q. Now, Mr. Solomon, you have stated in your direct examination that you are a merchant; now, is it not a fact that your business is indicated by three gilded balls being in front of your door, and that you are a licensed pawnbroker?

Def't's counsel objects, not proper cross-examination and immaterial.

Ans. Yes, sir: we do pawnbroking business in buying and selling new merchandise.

Q. Was not Mr. Gottlieb a competitor in that same business in the city of Denver during much of the time that you have known him?

Ans. Yes, sir.

Redirect examination:

Q. Do you know what Mr. Gottlieb's reputation was for truth and veracity in the city of Denver before you had any difficulty with him? If so, what was that reputation then, good or bad?

Compl't's counsel objects because not proper re-examination and no opportunity is now offered to cross-examine as to the means of knowledge of the witness prior to that time, and is immaterial.

Ans. Yes, sir; bad.

Q. State what led to the difficulty between you and Gottlieb which brought about that assault.

Counsel for compl'ts object because it is immaterial and not proper re-examination.

Ans. He tried to get me to believe a valueless article to be good and genuine and worth twice the amount it actually was worth; also he got a check by some hooks and crooks indirect from me and I know and believe that it was a put-up job on me for $25.00; said check he kept in his or in his attorney's possession for four months, never telling me that he had a check against me, and only
156 brought suit after one of my main witness- died. When the check was obtained I went to his store asking him to let me see his books in regard of the above valueless article which he represented to me to be good and genuine. He refused; said to me I couldn't read his books, and refused to show up what he had verbally told me. Well, it was shortly after that I met him coming from the Temple; I asked him then if he was the right man to go to a house of worship. Then the assault came in, I reckon, and I don't know who struck first.

Q. What led you to testify in this case concerning Gottlieb's reputation for truth and veracity?

Compl't's counsel objects as not proper re-examination, immaterial, and asks for the opinion of the witness.

Ans. I have heard that Gottlieb had obtained valuable property for merely nothing, and after the owner of said property died he tried to get some more.

I was subpœnaed to testify in this case.

Recross-examination:

Q. Mr. Solomon, the property that you testify in regard too for which the check was given you do not pretend to say was brought to you by Mr. Gottlieb or that you gave the check to his order, do you?

Ans. I said he got a check by some hooks and crooks. The payment of such check was stopped the following day and written across the face of the check from the cashier, Payment stopped. Days and weeks after the payment of the check was stopped in the hand of Gottlieb or his attorney they never notified me that the check is the property or owned by Gottlieb and for four months from the date the check was issued.

Q. Is it not a fact, Mr. Solomon, that you issued this check as a loan upon property pawned to you by another man than Mr. Gottlieb?

157 Ans. Yes, sir; but shortly after that Gottlieb came to my store. I showed him the very article which I have taken and given the said check. Said article was not half the value of what I paid for it, but Gottlieb, being a good judge of those particular goods, which he handled from day to day for 12 years, I have been told, and pronounced said worthless goods to be good and genuine, and I should not have refused to pay that check, as the worthless goods were genuine, and persuaded me to pay that check, but never told me that he is the owner of said check, in the hand at that time of his attorney, during all that time which he and his

attorney had the said check in their possession that he is the owner of it (I mean Gottlieb).

Q. Is it not a fact that the next day after giving that check as a loan upon that goods which he brought you you went to the bank and told the bank not to pay it?

Ans. Yes, sir; that the check was obtained by misrepresentation and fraud.

Q. Is it not a fact that you were threatened with a suit upon that check within two or three days after you issued it?

Def't's counsel objects because not proper cross-examination & immaterial.

Ans. Yes, sir; but I asked them for the owner of the check, and Q. I was told that it was left in the hand of this attorney from a dry-goods store. I went up the second day following with a friend of mine, who is dead now, and made a second demand and enquired who was the owner of that check. The attorney answered me, That belongs to me and if you don't pay me I'll sue you in a day or so, but did not sue in a day or so, as he told me, but brought suit after four months from said time, and when a friend of mine, E. Manuels, was dead, who was there present at that time.

Q. Judgment was rendered on that check against you, was it not?

158 Ans. Yes, sir; but I took an appeal on account that I did not have any witness, which I did not get done, and the case is still pending.

Q. Was this Mr. Manuels, who you say was your friend, the person who brought those goods to your store and pawned them, and to whom you issued that check?

Def't's counsel objects because it is irrelevant, and because it is an evident attempt on the part of the attorney in that case to get evidence out of this witness to be used in that trial.

Ans. No, sir; but Mr. Manuels heard about that check being in the hand of Attorney J. W. Horner, Esq., so Mr. Manuels told me he would go up with me to the said attorney, as he knew him personally, and he will find out who is the owner of that check, but after all he did not say or mention the name of the owner of the check, except it belonged to him and would have to be collected.

J. SOLOMON.

Subscribed and sworn to before me this 18th day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

By consent of counsel the further taking of testimony is continued until Wednesday, the 19th day of July, A. D. 1882, at ten o'clock a. m., at my office in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Wednesday, the 19th day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, counsel being present, the defendant produced JOHN S.
159 M. FOSTER, a witness in his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy herein, deposed and testified as follows:

Q. State your name, age, occupation, and place of business.

Ans. My name is John S. M. Foster; age, 43 years; occupation, millwright, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb?

Ans. I do.

Q. How long have you known him?

Ans. About seven years.

Q. Where has he resided during that time?

Ans. In Denver.

Q. Do you know his reputation for truth and veracity in the said city of Denver?

Ans. Yes, sir.

Q. Is that reputation good or bad?

Ans. Very bad.

Q. From your knowledge of that reputation would you believe him under oath in a case where he has a money interest?

Compl't's counsel objects because it is improper under the rules of evidence and not allowable, and asks for the opinion of the witness.

Ans. I would not.

Cross-examination:

Q. Mr. Foster, has not Mr. J. Solomon or Joseph Solomon been talking with you this morning in reference to the testimony you should give and say to you in substance that you must or that it would be necessary that you should so testify as to show no animosity toward Mr. Gottlieb?

160 Ans. Mr. Solomon has no influence over me whatever; I transact business for myself and think that I have been long enough in America not to be influenced by anybody. Mr. Solomon has not influenced me with the word animosity towards Mr. Gottlieb in the least.

Q. You do not pretend to say that he has not talked with you about this testimony that you should give this morning?

Ans. No, sir.

Q. Is it the same Joseph Solomon who talked with you about the testimony you should give, who came into this room with you, and was here at the time you were sworn?

Ans. I can't answer, for he did not talk to me about the testimony I was to give, but I don't know if his name is Joseph Solomon.

Q. Do you mean to say in your last answer that this man Joseph

Solomon did not talk with you about the matter of this testimony this morning?

Ans. The matter of this testimony comes right back to the testimony I am giving. Mr. Solomon offered no inducements, nor put words in my mouth to influence me in the least, but I don't pretend to say that Mr. Solomon did not talk to me this morning about Gottlieb.

Q. How did you come to meet Mr. Solomon this morning, and how long after you met did you continue in his presence, and was it from the time you first met until you came into this room with him and was sworn?

Ans. I happened to meet him coming from my place of business. I met him twice, spoke the time of day, and then met him again at the foot of the stairs; perhaps fifteen minutes elapsed between the two meetings.

Q. Did you not at the first meeting remain with him at least 15 minutes and talk to him about this matter in the presence of
161 others or where others could hear you?

Ans. I did not.

Q. When did you talk with him in regard to this matter?

Ans. Right here in the hall, near this room.

Q. How far distant from the place where you had this conversation with Mr. Solomon is it to where Mr. Solomon does business?

Ans. A half a block.

Q. Mr. Foster, have you not had some difficulty with Mr. Gottlieb regarding a house that you rented of him; and, if so, about how long ago was it?

Ans. I don't know whether I have or not.

Q. Did he not, against your will, claiming that you had not paid your rent, compel you to leave the house you had rented of him?

Ans. He did not.

Q. Was there not trouble between you and him in a dispute regarding the payment of rent of a house of Mr. Gottlieb's which you occupied?

Ans. There was a dispute between us, but I left Gottlieb's house voluntarily.

Q. Who did you hear speak against Mr. Gottlieb's reputation for truth and veracity?

Ans. Well, I have heard business men of Denver city. I presume they wouldn't like for me to mention their names—men that I have business transactions with.

Q. How many do you now recollect to have heard speak against Mr. Gottlieb's reputation?

Ans. I would not say exactly, but I should say safely twenty; perhaps I could say a hundred.

Q. Can you give the names of five different individuals whom you have heard speak of Mr. Gottlieb's reputation for truth and veracity?

162 Ans. I can.

Q. Please name them.

I object to using or giving the men's names because *their* business men.

Q. How recently have you heard men speak against Mr. Gottlieb's reputation for truth and veracity?

Ans. Within the last two months.

Q. When did you hear the last person speak of it, giving the positive time?

Ans. Oh, perhaps two months ago, excepting this morning, as I said before; Mr. Solomon's conversation this morning had no influence over me in this matter.

Q. Prior to the instance two months ago when you heard a party speak of Mr. Gottlieb's reputation, state how long it was that you heard the last person speak of Mr. Gottlieb's reputation.

Ans. Well, perhaps, from two months to ten weeks ago.

Q. This man, you say that he stated to you that he had good reason to look out for Gottlieb; is that substantially all that he said about Gottlieb at that time?

Ans. That is the substance

Q. Was this person a man who had been in Gottlieb's employ, or was he a man who was indebted to Gottlieb?

Ans. I think he was a man that Mr. Gottlieb was willing to have indebted to him; I don't know whether he was in Gottlieb's employ or not.

Q. Did you not ask him why he was not in Gottlieb's employ or doing business for Gottlieb, and did not that question call out what was said by the man?

Ans. I did not ask him the question; I saw him in another place of business.

163 Q. Had you not previously seen him doing business for Mr. Gottlieb?

Ans. Yes, sir.

Q. How did he come to speak to you about the matter?

Ans. Well, sir, it was in regard to a mining transaction, the way the conversation took place. He spoke first about the matter.

Q. Do you not know that Mr. Gottlieb has been out of business for more than six months last past?

Ans. I don't know; I consider that he was in business.

Q. The first person that you mentioned to have heard speak of Mr. Gottlieb's reputation about two months ago, had he been doing business with Mr. Gottlieb? Also state what he said.

Ans. Yes, sir; said that he had been doing business with Mr. Gottlieb and that Mr. Gottlieb would not pay him.

Q. Prior to the time you have spoken of, when did you hear another person speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. Probably three or four months ago; about three months.

Q. Had this person been doing business with Mr. Gottlieb?

Ans. He has done business with him in the last six years.

Q. What did this last man of whom you have spoken say?

Ans. Well, I think the substance was, "He told me that he had got his eyes open."

Q. When, prior to these three that you have named, did you hear another person speak of Mr. Gottlieb's reputation?

Ans. Three months and a half ago; about that time.

Q. What did he say?

Ans. This was a lady; at this time she said Mr. Gottlieb exacted of her to pay the rent of the house, ordered her to move out; the reason why was that she had rented the whole house afterwards;
164 rented the upstairs part to another party. Mr. Gottlieb notified the second party not to pay the rent to her for the upper part of the house, and therefore the lady that rented the upper part did not pay the rent and Gottlieb ordered her to leave the house.

Def't's counsel objects because the answer is irrelevant.

Q. When prior to the time you heard the last of the four speak of Mr. Gottlieb's reputation did you hear another person speak of Mr. Gottlieb's reputation?

Ans. About four months ago.

Q. What did that person say?

Ans. That person said that Mr. Gottlieb has misrepresented things to him to get a house that he had to rent.

Q. When prior to that conversation did you last hear another person speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. Oh, perhaps five months and a half ago.

Q. Had that person been doing business with Mr. Gottlieb?

Ans. Not that I know of; no, sir.

Q. Was his name Joseph Solomon or Solamon?

Ans. Yes, sir; it was Solomon, but not this Joseph Solomon.

Q. What is the full name of this Mr. Solomon, and where is he doing business and what business is he in?

Ans. H. Solomon; I don't know what H stands for. He has a store on 15th street; a jewelry and clothing store. I think there is three balls up in front of his place.

Q. What did he say about Mr. Gottlieb's reputation?

Ans. I think the substance was that he was a damned rascal.

Q. Generally, Mr. Foster, is it not a fact that the men that you heard speak of Mr. Gottlieb's reputation had had some business trouble with Mr. Gottlieb?

Ans. Yes, sir.

Q. Is it not a fact that the statements made by the parties
165 respectively to you arose from these business difficulties that the parties have had with Mr. Gottlieb?

Ans. I do not know.

Q. Do you mean to say or do you say now that the substance of the various conversations you have heard against Mr. Gottlieb's reputation are substantially in keeping with the substance of those conversations that you have detailed?

Ans. Yes, sir.

Q. When, about, did you first hear parties speak against Mr. Gottlieb's reputation for truth and veracity?

Ans. As far back as 1877.

Q. Is your general statement in regard to Mr. Gottlieb's reputa-

tion made from what you know yourself personally of Mr. Gottlieb or from what others have said in your presence or from both these sources combined?

Ans. *Their* from my personal knowledge—from my personal dealings with the man—and not what others told me.

Q. Mr. Foster, is not your business dealing in fruits and other commodities sold in connection therewith?

Ans. That is a portion of my business.

Q. In calling yourself a millwright do you mean to say that that is the business you are working at at this time?

Ans. I ain't working at it to day, but did some work of the kind yesterday. I have no millwright contract on hand, but would take a contract if one was offered. I am a millwright by trade. That I built the Harvest Queen and the Mrs. E. B. Younts mill, at Boulder.

Q. Have you spent any considerable time or even a tenth part of your time during the past two years working at the millwright's trade, and is it not a fact that you have a regular business retailing fruits in the city of Denver carried on at this time?

166 Ans. I have, and I have a regular business in retailing fruits, &c., in Denver.

Re-examination:

Q. How much of your knowledge of Gottlieb's reputation for truth and veracity do you know of your own knowledge, and how much comes from what others have told you in this city?

Compl't's counsel objects as not proper re-examination and immaterial.

Ans. Of my own knowledge I know enough, that I wouldn't believe his oath. From what others have told me it makes the thing doubly binding.

Q. State, if you know, whether that reputation was good or bad before you had any difficulty with him.

Compl't's counsel objects because it is not proper re-examination and immaterial.

Ans. Very bad.

JOHN S. M. FOSTER.

DENVER, *July 19th*, 1882.

Mr. Foster claims	2 days' attendance	$3 00
" " "	2 mileage at 15	30
		$3 30

Received payment of defendant's att'y, Henry C. Dillon.

JOHN S. M. FOSTER.

Subscribed and sworn to before me this 19th day of July, A. D. 1882.

J. W. WEBSTER, *Examiner.*

The defendant also produces JOHN P. LOWER, a witness in his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy herein, deposed and testified as follows:

167 Q. State your name, age, occupation, and place of residence.

Ans. My name is John P. Lower; age, 49 years; occupation, gun dealer, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb?

Ans. I do.

Q. How long have you known him?

Ans. About 8 years.

Q. Where has he resided during that time?

Ans. To the best of my recollection, on Blake street, Denver, Colorado, until recently.

Q. Do you know what his reputation is for truth and veracity in the said city of Denver?

Ans. To a certain extent I do.

Q. Have you heard that reputation discussed or spoken of by his acquaintances in said city; if so, how often?

Ans. I have during or in the course of business transactions to remember distinctly; when and where I cannot state.

Q. Please state, if you know, whether that reputation is good or bad.

Compl't's counsel objects to the question because no proper foundation has been laid for it, and because the witness's knowledge, as shown by his answer to the previous questions, is shown to not be sufficient to warrant him in answering.

Ans. Generally what I would consider bad.

Q. How often have you heard his reputation for truth and veracity spoken well of?

Compl't's counsel objects because the question is improper as direct examination, and immaterial.

Ans. I don't recollect of having to remember anything upon that point.

168 Cross-examination:

Q. You remember where you heard these conversations regarding Mr. Gottlieb's reputation for truth and veracity?

Ans. Usually in my own store, a few doors from his, and in M. L. Road's store.

Q. Were these conversations generally by men who lived in the city of Denver at the time or by parties temporarily in the city of Denver and who lived elsewhere?

Ans. Both.

Q. Were they by men who had had business transactions with Mr. Gottlieb?

Ans. Yes.

Q. Were the conversations or statements made by these parties

with reference to those business transactions or in connection with them?

Ans. Yes; to the best of my recollection.

Q. Were they by parties who were dissatisfied with those business transactions?

Ans. Generally.

Q. Did these parties speak in these conversations and their conversations relate to those business transactions, or did they relate to their own business transaction or the business transactions of others with Mr. Gottlieb?

Ans. Generally to their own immediate transactions at the time being.

Q. Did these conversations generally relate to a dissatisfaction of the business transaction of the party speaking of Mr. Gottlieb or were they confined to what Gottlieb had said?

Ans. By both being said or done at the time—by making a bargain and then going back on it or something of that kind; I can't tell exactly.

169 Q. Were these conversations generally with men who were under pecuniary obligations to Mr. Gottlieb at the time or had been under pecuniary obligations to him just previous?

Ans. Not that I can positively say.

Q. How many times, Mr. Lower, do you now remember to have heard different parties speak against Mr. Gottlieb's reputation for truth and veracity? Consider, count them up, and state the number.

Ans. Numerous times.

Q. Did these parties generally say anything at all about Mr. Gottlieb's reputation for truth and veracity, and is it not a fact that they simply manifested a dissatisfaction with some business matter that they had had with him?

Ans. They were generally very emphatic in their denunciation of him at the time. I have heard them say they would not believe him under oath, but to identify the person or time I cannot state.

Q. You have had a business relation with Mr. Gottlieb as merchants doing business almost side by side for years, have you not?

Ans. Yes.

Q. How often during these years have you had business transactions with Mr. Gottlieb?

Ans. My business relations with him date back about six years; it might average once a month to the best of my recollection.

Q. Were not your business transactions with Mr. Gottlieb during these years satisfactory?

Ans. They were.

Q. Is it not a fact, Mr. Lower, to your personal knowledge, that with all business transactions had with men in Mr. Gottlieb's peculiar line of business there are many cases of dissatisfaction, and that other men in that line have been spoken against by parties doing business with them much the same as Gottlieb was spoken

170 against in your presence?

Def't's counsel objects because the witness is incompetent to express such an opinion.

Ans. Generally speaking, they are all of the same kit, of course. Mr. Gottlieb being near at hand, I heard more of him than I did of others.

JOHN P. LOWER.

Subscribed and sworn to before me this 19th day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's counsel also produces AUGUSTUS G. POTTER, a witness in his behalf, who, being by me first cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy herein, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Augustus G. Potter; age, 37 years; occupation, wholesale liquors & cigars, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb?

Ans. I do.

Q. How long have you known him?

Ans. It must be ten or twelve years; perhaps longer.

Q. Where has he resided during that time?

Ans. On Blake street, between 15th & 16th, in the city of Denver, State of Colorado, except a short time when he was absent.

Q. Do you know what his reputation is for truth and veracity in the said city of Denver?

Ans. I know what it is down in our neighborhood, but I
171 don't know what it is uptown.

Q. Is that reputation good or bad?

Ans. Bad.

Q. Would you believe him under oath in a case where he has money at stake?

Compl't's counsel objects because it is an improper question as put, not allowable under the rules of evidence, and asks the opinion of the witness.

Ans. I would not.

Cross-examination:

Q. Do you answer this last question from what you know of him yourself or from what others have said of his reputation or from the two combined?

Ans. Both.

Q. Were these parties that you have heard speak of Mr. Gottlieb's reputation men or parties who had done business with Mr. Gottlieb and were dissatisfied with those business transactions?

Ans. Some had direct and some indirect business with him.

Q. But they were parties who were dissatisfied with their business transactions, were they?

Ans. Yes, sir.

Q. Were these parties generally men to whom Mr. Gottlieb had loaned money upon chattels?

Ans. I would say not, because the parties—either of them—were worth more money than Gottlieb was.

Q. Who were these parties that you heard speak against Mr. Gottlieb's reputation?

Ans. Well, J. J. Maxey is one; Charles Roth, the jeweler; Henry Tiernan. There is others, but I can't recall their names.

Q. Did not Mr. Maxey have some difficulty with Mr. Gottlieb?

Ans. I couldn't tell.

172 Q. Did not Mr. Tiernan have some difficulty with Mr. Gottlieb?

Ans. I don't know that I can call it a difficulty.

Q. Did not Charles Roth have some difficulty with Mr. Gottlieb?

Ans. I don't know that I could call that a difficulty.

Q. Were not these statements made to you by the parties named by you respectively their version of a business transaction between them and Gottlieb?

Ans. Yes, sir.

Q. Now, from what they said about these business transactions do you not make up your conclusion of what Mr. Gottlieb's reputation for truth and veracity is or was?

Ans. Yes; together with my own knowledge.

Q. You have had some business transactions with Mr. Gottlieb, have you not?

Ans. Only once.

Q. State briefly what that was and whether or not that was satisfactory to you.

Def't's counsel objects because it is irrelevant.

Ans. I bought in good faith a restaurant from him; paid him $1,000.00; was to take possession the following morning; lease and all to be turned over to me on the following day. Mr. Gottlieb did not do it.

Q. Was there not a difficulty between you and Mr. Gottlieb regarding the *the* terms of the contract, he claiming that you were to take it subject to some rent due and you claiming you were not?

Def't's counsel objects for same reasons last above stated.

Ans. He made no such claims.

Q. Since that transaction is it not a fact that you have felt very unfriendly towards Mr. Gottlieb?

Ans. Socially I have, but in business not.

173 Re-examination:

Q. State, if you know, what Gottlieb's reputation was for truth and veracity before you had any difficulty with him.

Compl't's counsel objects because it is not proper re-examination and immaterial at this time.

Ans. It was just as bad as before.

A. G. POTTER.

Subscribed and sworn to before me this 19th day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

By consent of counsel the further taking of testimony is continued until Friday, the 21st day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this, Friday, the 21st day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, counsel for parties being present, the defendant produced JOHN J. MAXEY, a witness on his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy herein, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is John J. Maxey; age, 42 years; occupation, agricultural implement business, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb?

Ans. I do.

Q. How long have you known him?

Ans. I have known him all of twelve years; perhaps longer.

174 Q. Where has he resided during that time?

Ans. In Denver.

Q. Do you know what his reputation is for truth and veracity in the said city of Denver?

Ans. Yes, sir.

Q. Is that reputation good or bad?

Ans. I have never heard of anything good; it is bad.

Cross-examination:

Q. Mr. Maxey, how long have you resided in Denver?

Ans. About 23 years, except what little time I have been away—about eight months.

Q. Have you had any business transactions with Mr. Gottlieb since you have known him?

Ans. I have.

Q. On how many different occasions?

Ans. Twice, I believe.

Q. And when were these?

Ans. Something like eight years ago, and both of them in the same year, as near as I remember.

Q. Have you ever had any personal difficulty with Mr. Gottlieb of any sort?

Ans. No, sir; I had a difficulty with him about a note.

Q. When was that.

Ans. About eight or nine years ago. It is one of the transactions which I allude to.

Q. Since that time have you been on friendly terms with Mr. Gottlieb?

Ans. I haven't been anyways friendly to him.

Q. In answer to Mr. Dillon's last direct question you state "that you have never heard anything good about his reputation,"
175 and then say "it is bad." Now, will you state what you understand by the phrase "reputation for truth and veracity"?

Compl't's counsel withdraws the last question and asks:

Q. How many persons who were acquainted with Mr. Gottlieb have you talked with about the subject in general of Mr. Gottlieb's reputation for truth and veracity?

Ans. There has been quite a number. I could not state exactly; perhaps eight or ten.

Q. Had these persons with whom you spoke been long acquainted with Mr. Gottlieb?

Ans. I believe they are old settlers here.

Q. When did you have these conversations?

Ans. It has been within seven or eight years.

Q. Did these persons, all or any of them, in these conversations speak of Mr. Gottlieb in connection with difficulties or differences which they had had with him in business matters?

Ans. They had no differences with him whatever.

Q. Did all or any of these persons in the conversation with you speak of Mr. Gottlieb's reputation for truth and veracity in connection with difficulties or differences which you or other persons than themselves had had with him in business matters?

Ans. Well, they spoke of my difficulties with him—two or three of the parties—and some which others had had.

Q. What did those persons say about Mr. Gottlieb in those conversations who spoke of the difficulties which you had had with him?

Def't's counsel objects because it is not proper cross-examination and irrelevant.

Ans. They spoke of him as a person that would take advantage of any one.

Q. Is that the substance of their expressions derogatory of Mr. Gottlieb's reputation?

176 Ans. There was more said by those men.

Q. State what further they said upon that subject in these conversations.

Ans. A couple of them stated that he had swindled his father-in-law. They also said they would not believe him on oath.

Q. Now, state what was said about Mr. Gottlieb's reputation by

those persons with whom you conversed and who did not speak of your difference with Mr. Gottlieb.

Ans. Well, I don't remember what was said.

Q. State the names of those persons with whom you conversed.

Ans. B. Davidson is one, Charles Leichsenring, Gus Potter; other parties here, but I do not remember their names; two or three of them have clothing stores.

Q. Was one of those persons Mr. Trounstine?

Ans. No, sir.

Q. How lately did you have conversations with these persons upon this subject?

Ans. I had one this morning; no others lately; only a couple since I have been subpœnaed.

Q. With whom was the conversation had this morning?

Ans. With Charles Laskey, and I do not remember the name of the other one; keeps a clothing store near the News office.

JOHN J. MAXEY.

Subscribed and sworn to before me this 21st day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's counsel also produced JAS. U. MARLOW, a witness in his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

177 Q. State your name, age, occupation, and place of residence.

A. My name is James U. Marlow; age, 50 years; occupation, hotel keeper, and residence in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb?

Ans. Yes, sir.

Q. How long have you known him?

Ans. I think since about 1865.

Q. Where has he resided during that time?

A. I think, most part of the time, in Denver.

Q. Do you know what his reputation is for truth and veracity in said city of Denver?

Ans. I know what it is from hearsay and from transactions that I have had with him.

Q. Is that reputation good or bad?

Ans. Well, I should say bad.

Cross-examination:

Q. How lately were you a hotel keeper in Denver?

Ans. I quit the Brinswick a little over a year ago.

Q. Have you had any business transactions with Mr. Gottlieb since you have been in Denver?

Ans. I don't know as I have ever had any business transactions

with him. He sued me, but I did not recognize the account, neither did the court, and beat him at last.

Q. Is that all the business transactions you had with him?

Ans. That is all I recollect of; I might have gone into his store and bought some little trinket some time.

Q. Have the persons with whom you conversed about Mr. Gottlieb's reputation for truth and veracity all or any of them had dealings with him?

Ans. I don't know of any of them having dealings with him at all.

178 Q. Please give the name of such persons as you remember to have heard speak in relation to Mr. Gottlieb's reputation.

Ans. I don't think I can give the names outside of Phil. Trounstine.

Q. Have you lately conversed with Mr. Trounstine upon this subject?

Ans. I should judge a month or six weeks ago; can't state positively.

Q. State what *were* said by Mr. Trounstine in that conversation.

Def't's counsel objects as improper to ask the witness what a third party has said to him about another's reputation.

Ans. Well, it came up about this trial I speak of. Trounstine told me that he was on the stand and asked him who else would swear that he wouldn't believe Gottlieb under oath, and he referred him to J. U. Marlow.

Q. When was it that you had your lawsuit with Mr. Gottlieb?

Ans. I think, perhaps, in 1877 or '78; can't state positively.

Re-examination:

Q. State, if you know, whether Mr. Gottlieb's reputation for truth and veracity in the city of Denver was good or bad before you had any difficulty with him.

Compl't's counsel objects as incompetent and irrelevant and not proper re-examination.

Ans. I believe, as I said before, I have never heard any good of him. I should say it was bad.

Recross-examination:

Q. Who did you hear speak of the character of Gottlieb for truth and veracity previous to his suit?

Ans. I cannot call any names.

Q. Do you know whether Mr. Trounstine, in the conversa-
179 tion referred to, spoke of this suit of Gottlieb *vs.* Thatcher as the suit in which he was a witness?

Ans. No, sir; I could not say.

JAMES U. MARLOW.

Subscribed and sworn to before — this 21st day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's counsel produces EVAN G. OWENS, a witness in his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy herein, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Evan G. Owens; age, 49 years; occupation, gunsmith, and reside in Denver, Arapahoe county, Colorado.

Q. Do you know the complainant, Joseph Gottlieb?

Ans. Yes, sir.

Q. How long have you known him?

Ans. I have known — since 1867.

Q. Where has he since resided?

Ans. In Denver most of the time, in business on Blake street.

Q. Do you know what his reputation for truth and veracity is in the said city of Denver?

Ans. I do know something about his reputation to a certain extent?

Q. Is that reputation good or bad?

Ans. Bad.

Q. From your knowledge of that reputation would you believe him under oath in a case where he has a pecuniary interest?

Ans. I would not, where it affects his own pocket-book.

180 Cross-examination:

Q. How long have you lived in Denver?

Ans. Since 1867.

Q. Have you had business transactions with Mr. Gottlieb?

Ans. I have two or three times.

Q. When?

Ans. I did not have any business with him for five or six years.

Q. Were the transactions which you mentioned, all of them, about six years ago, or were they longer ago? State about the date of each transaction.

Ans. I couldn't do that; I was acting as M. L. Rood's agent at the time.

Q. Did you have any trouble with Mr. Gottlieb about those transactions?

Ans. Yes; I did.

Q. Did you and Mr. Gottlieb get into litigation about them?

Ans. Yes; some.

Q. What do you understand by the word reputation?

Ans. By reputation is meant whether a man is straightforward in his business or not.

EVAN G. OWENS.

Subscribed and sworn to before me this 21st day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendants produced FRED. Z. SALOMON, a witness on his behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in re-
181 lation to matters in controversy herein, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.
Ans. My name is Fred. Z. Solomon; age, 50 years; occupation, grocer, and reside in Denver, Arapahoe county, Colorado.
Q. Do you know the complainant, Joseph Gottlieb?
Ans. I do.
Q. How long have you known him?
Ans. Well, about twelve or fifteen years; maybe more.
Q. Where has he resided during that time?
Ans. In Denver, as far as I know.
Q. Do you know what his reputation is for truth and veracity in the said city of Denver?
Ans. I do.
Q. Is that reputation good or bad?
Ans. Bad.

Cross-examination:

Q. Mr. Solomon, have you had any business transactions with Mr. Gottlieb?
Ans. None, except buying goods in the store they pay for.
Q. Have you had any personal difficulty with him of any sort?
Ans. None whatever.
Q. Are you on terms of friendship with Gottlieb?
Ans. Just as we always were, acquaintances.
Q. What do you understand by the phrase in Mr. Dillon's question "reputation for truth and veracity"?
Ans. I understand that it is the reputation of the man amongst business men generally and those who know him.

FRED. Z. SALOMON.

Subscribed and sworn to before me this 21st day of July, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

182 By consent of counsel the further taking of testimony is continued until Monday, the 24th day of July, A. D. 1882, at the hour of ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Monday, the 24th day of July, A. D. 1882, at ten o'clock a. m., counsel being present, by consent the further taking of testimony herein is continued until Monday, the 31st day of July, A. D. 1882, at ten o'clock a. m., at my office.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Monday, the 31st day of July, A. D. 1882, at ten o'clock a. m., at my office, counsel being

present and consenting thereto, the further taking of testimony is continued until Friday, the 31st day of July, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Friday, the 31st day of July, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present, by consent the further taking of testimony was continued until Friday, the 4th of August, A. D. 1882, at ten o'clock a. m., at my office.

JOHN W. WEBSTER, *Examiner.*

183 Pursuant to the foregoing continuance, this Friday, the 31st day of July, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present, by consent the further taking of testimony was continued until Friday, the 4th day of August, A. D. 1882, at ten o'clock a. m., at my office.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Friday, the 4th day of August, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present and consenting thereto, the further taking of defendant's testimony was continued until the 10th day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Thursday, the 10th day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver, counsel for the respective parties being present and consenting thereto, the further taking of testimony was continued until Tuesday, the 15th day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Tuesday, the 15th day of August, A. D. 1882, at ten o'clock a. m., at my office, counsel for the parties being present and consenting thereto, the further taking of testimony was continued until Wednesday, the 16th day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

184 Pursuant to the foregoing, this Wednesday, the 16th day of August, A. D. 1882, at the hour of ten o'clock, a. m., at my office, counsel for the respective parties being present and consenting thereto, the further taking of testimony on behalf of defendant was continued until Thursday, the 17th day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Thursday, the 17th day of August, A. D. 1882, at ten o'clock a. m., at my office, counsel

being present and consenting thereto, the further taking of testimony is continued until Monday, the 21st day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Monday, the 21st day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver, the counsel for the respective parties being present and consenting thereto, the further taking of testimony on behalf of defendant was continued until Tuesday, the 22nd day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Tuesday, the 22nd day of August, A. D. 1882, at the hour of ten o'clock a. m., at my office, the counsel for the respective parties being present and consenting thereto, — was continued until Thursday, the 24th
185 day of August, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Thursday, the 24th day of August, A. D. 1882, at ten o'clock a. m., at my office, the counsel for the respective parties being present and consenting thereto, the further taking of testimony on behalf of defendant is continued until Saturday, the second day of September, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Saturday, the second day of September, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present.

The defendant produced OWEN E. LE FEVRE, a witness on the part of defendant, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Owen E. Le Fevre; age, 34 years; occupation, lawyer, and reside in Denver, Arapahoe county, State of Colorado.

Q. In what capacity, if any, were you engaged in a certain action in the district court of Arapahoe county, Colorado, where Samuel Kaucher was plaintiff and Samuel H. Thatcher was defendant?

Ans. I was one of the attorneys for Samuel Kaucher, plaintiff.

Q. Who were the plaintiff's other attorneys, if any?

Ans. Mr. J. Q. Charles and my partner, Col. Jacobson; Mr. Charles had a partner, A. C. Phelps, who also appeared in the case.

Q. What disposition did the plaintiff make of the judg-
186 ment recovered in that action?

Counsel for compl'ts objects because incompetent, immaterial, and not the best evidence.

Ans. It was assigned to the attorneys, Messrs. Charles & Phelps and Jacobson and Le Fevre.

Q. Do you recollect an execution sale which took place under that judgment of the property in dispute in this case?

Ans. I do.

Q. Who ordered the levy upon said property under that execution?

Compl't's counsel objects because incompetent and immaterial.

Ans. Mr. Charles and myself, representing the two firms.

Q. Were you acquainted with the said Samuel H. Thatcher in his lifetime?

Ans. I was.

Q. In causing that execution to be levied as you have stated in whose interest and for whose benefit were you acting?

Counsel for compl't objects because it is incompetent and immaterial.

Ans. For our own benefit, of course, as it was our only way to get our money.

OWEN E. LE FEVRE.

Subscribed and sworn to before me this 2nd day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's counsel also produces KATE P. MACE, a witness, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy in this case, deposed and testified as follows:

187 Q. State your name, age, occupation, and place of residence.

Ans. Mt name is Kate P. Mace; age, 21 years; deputy clerk of the county court, and reside in Denver, Arapahoe county, Colorado.

Q. Have you in your custody the original files in the matter of the estate of Samuel H. Thatcher, deceased? If so, please produce them.

Ans. Yes, sir.

And produces them.

Q. Please produce from the files of said estate the appraisement bill of the goods and chattels of said deceased; also the claim of Joseph Gottlieb against said estate; also an affidavit filed by said Joseph Gottlieb in said estate March 4th, 1879; also another affidavit of the said Gotttlieb filed in the same estate March 20th, 1879.

Ans. These are the papers here.

The witness produces papers called for.

KATE P. MACE.

Subscribed and sworn to before me this 2nd day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Here defendant's counsel now offers in evidence said papers, certified copies of which are hereto attached and marked Exhibits 8, 9, 10, and 11 and made a part of the testimony herein.

Complainant's counsel objects to the introduction of each paper as incompetent and immaterial.

Defendant's counsel now recalls Miss G. S. RICHARDS, a witness heretofore sworn, who, being by me first duly sworn, testified as follows:

Q. Please produce the files in the district court of Arapahoe county, Colorado, in case of Joseph Gottlieb *vs.* Samuel H. Thatcher, No. 3544.

188 Ans. Here they are.

Witness here produces same.

Q. Please produce from said files, if you have them there, the promissory note sued on in that case, a præcipe for a special execution, filed July 24th, 1877; the execution issued under said præcipe, filed Dec. 4th, 1877, with the return thereon, & the dismissal of proceedings in said cause against J. Cook, Jr., garnishee, filed Dec. 13th, 1877.

Ans. There are the papers.

Here the witness produces the papers called for.

G. S. RICHARDS.

Subscribed and sworn to before me this 2nd day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's counsel here offers in evidence the last-mentioned papers, certified copies of which are hereto attached, marked Exhibits 12, 13, 14, and 15, and made a part of the testimony in this cause.

To which the complainant objects to each paper introduced as incompetent and immaterial.

Defendant's counsel now produces WILLIAM H. SALISBURY, a witness in his behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controver-y, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is William H. Salisbury; age, 49 years,; deputy county clerk, and reside in Denver, Arapahoe county, Colorado.

Q. Please produce from the records of your office the record of a deed of trust from A. C. & I. L. McCormick to David H. Moffat, Jr., for the use of Samuel H. Thatcher, dated January 1st, 1874;

189 also trustees' deed from same grantors to Joseph Gottlieb, dated Jan'y 10th, 1879; also chattel mortgage from Zella Glenmore to Joseph Gottlieb, dated October 31st, 1876.

Ans. Here they are.

Here witness produces the record of said deeds, to wit, Book 87, page 265; Book 104, page 306, and Book 59, page 136.

WILLIAM H. SALISBURY.

Subscribed and sworn to before me this 2nd day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Here defendant's counsel offers in evidence the records of said deeds and chattel mortgage, certified copies of which are hereto attached and marked Exhibits 16, 17, and 18 and made a part of the testimony in this cause.

Compl't's counsel objects to the introduction of each paper as incompetent and immaterial.

Defendant's counsel now offers in evidence a certified copy of a deed of trust from Samuel H. Thatcher to D. H. Moffat, Jr., trustee, for the use of Joseph Gottlieb, dated November 18th, 1875, and recorded in Douglas county, Colorado, November 20th, 1875, in Book H, pages 57, 58, & 59, marked Exhibit 19, and made a part of the testimony herein.

Also offers in evidence a certified copy of a trustee's deed from David H. Moffat, Jr., trustee, to Joseph Gottlieb, dated Feb'y 17th, 1877, and recorded in Douglas county, Colorado, Feb'y 22, 1877, marked Exhibit 20, and hereto attached and made a part of the testimony herein.

Complainant's counsel objects to each of the two last-named papers as incompetent and immaterial, but waives the production
190 of the original records.

Defendant's counsel now produces DAVID W. HART, a witness on his behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is David W. Hart; age, 44 years; occupation, deputy treasurer, and reside in Denver, Arapahoe county, Colorado.

Q. Look at papers marked Exhibits 21, 22, 23, 24, 25, 26, & 27, which are hereto attached and made a part of the testimony in this cause, purporting to be receipts for taxes upon the property in question in this case and certificates of redemption of the same from tax sales, and state, if you know, in whose handwriting are the signatures to those papers.

Compl't's counsel objects to it as incompetent and immaterial.

Ans. The certificates of redemption are signed by John L. Dailey, treasurer of Arapahoe county, Colorado, and the tax receipts are in my handwriting as deputy treasurer of same county.

Q. Referring to the said certificates of redemption, please give

the names of the purchasers at the tax sales mentioned therein to whom the certificates of purchase were assigned and by whom redeemed.

Compl't's counsel objects as incompetent and immaterial.

Ans. E. J. Binford and G. W. Holse seemed to be from the records of this office the original purchaser, and also one George S. Smith, and that they were all assigned to Joseph Gottlieb and redeemed by Lewis C. Thatcher.

Cross-examined:

Q. Is there anything on the records to show whether Lewis C. Thatcher made the redemption in person or by an agent;
191 and, if by an agent, by whom?

Ans. The records here show that it was redeemed by L. C. Thatcher.

Q. Does it often occur that persons claiming to be agents of other persons make redemptions in the names of such other persons?

Ans. Yes.

Q. Is it used in such cases to make a record of the names of the persons who act in making such redemptions?

Ans. Not unless it is requested by the parties making it.

Q. And unless so requested the form of the redemption certificate would name only the person in whose behalf the redemption is claimed to have been made?

Ans. Yes.

D. W. HART,
Deputy Co. Tr.

Subscribed and sworn to before me this 2nd day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Defendant's counsel now offers in evidence the said tax receipts and redemption certificates, which are hereto attached and marked Exhibits 21, 22, 23, 24, 25, 26, and 27 and made a part of the testimony in this cause.

Compl't's counsel objects to each paper introduced as incompetent and immaterial.

Defendant's counsel also offers in evidence a certified copy of the judgment in the case of Samuel H. Thatcher *vs.* Samuel Kaucher in the supreme court of the Territory of Colorado, a certified copy of which is hereto attached, marked Exhibit 28.

192 To which compl't's counsel objects because incompetent and immaterial and waiving the production of the original records.

Defendant's counsel also offers in evidence certified copy of præcipe for writ of error to the Supreme Court of the United States in the same case, filed July 12th, 1875, in the office of the clerk of the said Supreme Court.

Also certified copy of citation in same case, dated July 14th, 1875; also a certified copy of the writ of error in the same case, dated July 14th, 1875, with the indorsements thereon.

Also, certified copy of remittiture from the United States Supreme Court, filed Jan'y 28th, 1877, marked Exhibits 29, 30, & 31 and made a part of the testimony herein.

Compl't's counsel objects to each of the papers introduced as incompetent and immaterial, waiving only the production of the originals.

By stipulation of counsel the further taking of testimony on behalf of defendant is continued until Wednesday, the 6th day of September, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Wednesday, the 6th day of September, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present and consenting thereto, the taking of testimony on behalf of defendant was continued until Thursday, the 7th day of September, A. D. 1882, at ten o'clock a. m., at my office.

JOHN W. WEBSTER, *Examiner.*

193 Pursuant to the foregoing continuance, this Thursday, the 7th day of September, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present—

The counsel for defendant produced LEONARD H. EICHOLTZ, a witness on his behalf, who, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My mame is Leonard H. Eicholtz; age, 50 years; occupation, civil engineer, and reside in Denver, Arapahoe county, State of Colorado.

Q. Were you a member of the late firm of Gray & Eicholtz in the year 1875; if yea, how long thereafter did that firm continue?

Ans. Yes, sir; and that firm continued up until his death, August, 1877.

Q. Did you know Samuel H. Thatcher in his lifetime?

Ans. Yes, sir.

Q. Did you or the said firm of Gray & Eicholtz have any dealing with him in the year 1875; if yea, what was that dealing?

Compl't's counsel objects as incompetent and immaterial.

Ans. We, the firm of Gray & Eicholtz, loaned him $1,000.00 on May 31st, 1875, for which we held his collateral security by the note of A. C. & I. L. McCormick, secured by deed of trust on certain lands in vicinity of Denver.

Q. Please look at paper marked Exhibit 32 and hereto attached

and state in whose handwriting it is and what relation it bears, if any, to the transaction with the said Samuel H. Thatcher.

Compl't's counsel objects for the reasons last above stated.

Ans. This receipt is in the handwriting of my partner, Cap-
194 tain Grey, and is a receipt for the note which we received as collateral security for the money loaned.

Q. Please state, if you know, whether the deed of trust marked Exhibit 16 is a copy of the deed of trust securing the McCormick note last mentioned by you.

Compl't's counsel objects for same reasons last above mentioned.

Ans. This is a copy of the deed of trust accompanying the McCormick note last mentioned, to the best of my knowledge.

Q. Did the said Samuel H. Thatcher afterwards pay Grey & Eicholtz the said note; if yea, when did he pay it?

Compl't's counsel objects for same reasons last above stated.

Ans. He paid the face of the note, according to our books, November 15th, 1876.

Q. What was the business carried on by the firm of Grey & Eicholtz?

Ans. We were money brokers.

Q. Were you acquainted with the values of real estate in and about the city of Denver in the year 1875, and have you been from that time to the present?

Ans. Yes, sir; to some extent.

Q. In making loans upon real estate upon what basis did you act with reference to the value of the security required?

Compl't's counsel objects because incompetent and immaterial.

Ans. As a rule, to inside property, about one-half its value, and outside property about one-third.

Q. State, to the best of your judgment, what was the value of the twenty acres of land described in that deed of trust, Exhibit 16, at the time you made that loan.

195 Compl't's counsel objects as incompetent and immaterial.

Ans. The loan was made by my partner, and I don't remember the exact location of the property.

Q. How long had you been acquainted with Samuel H. Thatcher prior to his death in February, 1879?

Ans. I had known him by sight five or six years. I had no other relations with him except this transaction of this loan.

Q. In making a loan to a party state what the custom of your firm was with reference to ascertaining the solvency of the party before making it.

Compl't's counsel objects because incompetent and immaterial and is hearsay evidence.

Ans. We would ascertain the standing of the parties through bankers, Bradstreet's agency, and other sources. In this instance we considered him good without any collateral security. The note was offered to us and we took it.

Q. State, if you know, whether he continued to be in solvent circumstances down to the time of paying his note to you.

Compl't's counsel objects as incompetent and immaterial and because the witness has not yet shown whether he had knowledge of the solvency or insolvency of Samuel H. Thatcher.

Ans. I think he was. I know it only from general report.

Def't's counsel now offers in evidence as a part of the testimony of the witness the receipt mentioned by him, dated May 1st, 1875, and which is marked Exhibit 32, which is hereto attached and made a part of the testimony of this witness.

To which counsel for complainant objects because incompetent and immaterial.

Cross-examination:

Q. Did you personally transact the whole or any part of
196 the business in making the loan to Samuel H. Thatcher?

Ans. I believe I was present at the time, but the business was transacted by my partner; I do not have a perfect recollection of it.

Q. When and to whom did Samuel H. Thatcher pay the money on the $1,000.00 note?

Ans. To my partner; November 15th, 1876, as appears from our books; I was absent at the time.

Q. Do you know whether Thatcher gave the money at that time to your partner or to yourself in any other way than from the memorandum you find on the books?

Ans. I only know he was credited on that day by my partner on the books; I think I was in Philadelphia at the time.

Q. Mr. Eicholtz, did the firm of Grey & Eicholtz take other security from Thatcher for the $1,000.00 note; &, if so, what others?

Ans. I can't recollect of any other; our books show no other; the transaction was made by my partner, and I don't remember of any other.

Q. Was there not a trust deed given by Samuel H. Thatcher to Grey & Eicholtz upon lands in Arapahoe county, and also some in Douglas county, as security for that loan?

Ans. I can't recall the fact; if there was there must be a record of it; there is no record on our books of the fact.

Q. Do you remember of Mr. Gottlieb, the plaintiff in this action, having paid you twenty dollars or thereabouts, balance which you claimed for interest on this loan, and at his request you directed David H. Moffat, Jr., to release a trust deed, which had been given for your benefit to secure this loan?

Ans. Our books show that Gottlieb paid $15.00, but I do not recol-

lect that I gave an order to Mr. Moffat to release any trust
197 deed; I do not remember of giving any order to release a trust deed to Mr. Moffat.

L. H. EICHOLTZ.

Subscribed and sworn to before me this 7th day of September, 1882.

JOHN W. WEBSTER, *Examiner.*

Def't's counsel now recalls ROBERT S. WILSON, a witness who has been heretofore sworn in this case, who deposed and testified as follows:

Q. In what business were you engaged and where in the month of October, 1876?

Ans. I was in the auction and commission business on Blake street, in the city of Denver.

Q. Was it a part of your business to appraise the value of personal property?

Ans. It was.

Q. How much experience had you had prior to October 31st, 1876, in appraising the value of personal property in the city of Denver?

Ans. I have been in the same business most of the time since 1848.

Q. Did you appraise the value of any personal property in the city of Denver on or about the 31st of October, 1876, at the request of the complainant, Joseph Gottlieb, or of one Zella Glenmore, or both of them?

Compl't's counsel objects as incompetent and immaterial and calls for hearsay.

Ans. Well, I am not certain whether Mr. Gottlieb requested me to put a valuation on it or not; I did put a valuation on it at the request of Zella Glenmore—I believe her name was some-
198 thing of that kind—and "Rhoda," sometimes called "Rhoda Dĕvan," and sometimes called Rhoda Dĕvan.

Q. Look at Exhibit 18, purporting to be a copy of the chattel mortgage from Zella Glenmore to Joseph Gottlieb, and state whether or not the personal property described therein is the same personal property which you appraised.

Compl't's counsel objects because it is incompetent and immaterial & that it is leading.

Ans. I think this is a decription of the property that was in that house at the time.

Q. What valuation did you place upon that property and what do you consider it was worth at the time you appraised it?

Compl't's counsel objects because it is incompetent, immaterial, and hearsay.

Ans. I told Zella Glenmore that the property in that house at the

time for the purpose for which it was used was worth six thousand dollars, and if she could buy it for any less she would buy a bargain.

Q. State, if you know, whether she borrowed any money of the said Joseph Gottlieb with which to pay for that property; if so, how much.

Compl't's counsel objects because it is incompetent and immaterial.

Ans. I don't know how much exactly, but she told me and Mr. Gottlieb told me and Sam. Thatcher told me that she did borrow a considerable sum. I think it was over two thousand dollars, but how much I cannot exactly tell.

Q. How did she secure the payment of it?

Compl't's counsel objects as incompetent and immaterial.

Ans. By a chattel mortgage on this property and a note
199 signed by herself and Sam. Thatcher, and there was a trust deed or mortgage given by Sam. Thatcher on some land in Douglas county. I am not certain whether it was on land in Arapahoe county or not.

Q. Look at Exhibits 18 & 19 and state whether they are copies of the chattel mortgage and deed of trust to which you have just referred.

Compl't's counsel objects as incompetent and immaterial.

Ans. Exhibit 18, I believe, is a copy of the chattel mortgage. Exhibit 19, I can't tell you whether it is a copy of the trust deed or not; it described the land which I understood to be the land that Thatcher gave a deed of trust to.

Q. Was all the money borrowed by Zell. Glenmore of Mr. Gottlieb used by her in purchasing that personal property of Rhoda Devan's?

Compl't's counsel objects because it is incompetent, immaterial, and calls for hearsay evidence.

Ans. I don't know how much money she borrowed, but she paid, as near as I can tell, about three thousand dollars.

Cross-examination:

Q. Mr. Wilson, did you auction that property off afterwards?

Ans. I did.

Q. How much did it bring?

Ans. Well, I can't give it exactly. I think our books would show if I could get at them, but my recollection is that they brought in the neighborhood of eighteen hundred dollars. There were some other goods, I think, in the sale, but I am not certain whether the ($1,800) eighteen hundred dollars is the aggregate or not.

Redirect examination:

Q. Did you make that auction sale at Zella Glenmore's house; if not, where did you make it?

Compl't's counsel objects because it is incompetent and
200 immaterial.

Ans. I did not make the sale at Zell. Glenmore's house, but made it in the house No. 405 Larimer street, now occupied by Lewis & Scott.

Q. Who caused them to be removed there?

Compl't's counsel objects for same reasons last above stated.

Ans. Mr. Gottlieb.

Q. At whose instance did you make the auction sale?

Compl't's counsel objects for same reasons last above stated.

Ans. I was employed by Mr. Gottlieb.

Q. Did or did not Mr. Gottlieb seize and remove and have those goods sold under that chattel mortgage mentioned by you?

Compl't's counsel objects for same reasons last above given.

Ans. Mr. Gottlieb demanded possession of the goods in Zell. Glenmore's house and placed me in possession of them, and I superintended their removal and afterwards sold them by his order after having been legally advertised under this chattel mortgage.

ROB'T S. WILSON.

Subscribed and sworn to before me this 7th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

By consent of counsel the further taking of testimony on behalf of defendant is hereby continued until Saturday, the ninth day of September, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Saturday, the 9th of September, A. D. 1882, at ten o'clock a. m., counsel for re-
201 spective parties being present, the counsel for defendant not having any further testimony or proofs to offer before me in Denver, the taking of further testimony before me in Denver is hereby closed this 9th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Testimony in Rebuttal.

By stipulation of counsel the taking of testimony in rebuttal was opened before me, at my office, in Denver, this Thursday, the 21st day of September, A. D. 1882, at the hour of ten o'clock a. m. Counsel for the respective parties being present and consenting thereto, the taking of testimony was set down for and continued until Saturday, the 23d day of September, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Saturday, the 23d day of September, A. D. 1882, at ten o'clock a. m., at my office,

counsel for respective parties being present, the complainant produced ANDREW C. WRIGHT, a witness on his behalf in rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Andrew C. Wright; age, 44 years; occupation, liveryman, and reside in Denver, Arapahoe county, Colorado.

Q. How long have you resided in the city of Denver?

202 Ans. I have been in the town from fifteen to eighteen years. I first came in 1858.

Q. Do you know Joseph Gottlieb, the complainant, and how long have you known him and where have you known him?

Ans. I have known him since 1869, in Denver.

Q. Do you know the reputation of Mr. Joseph Gottlieb for truth and veracity in the community where he resides?

Ans. I have never heard it questioned. I know it from my own dealings with him.

Q. Explain what you mean when you say that you never heard his reputation for truth and veracity questioned.

Def't's counsel objects as improper, the answer requiring no explanation and because it is leading.

Ans. Well, I mean like this: that I never heard any one say anything against his reputation for truth and veracity, but, on the contrary, I have heard persons say that he was the fairest man they had to deal with in his occupation as pawnbroker.

Def't's counsel objects to the answer as incompetent, and that part relating to what he has heard parties say is irrelevant and immaterial.

Q. From your knowledge of Mr. Gottlieb's reputation for truth and veracity would you believe him under oath when the matter in controversy affects his personal and private interests?

Def't's counsel objects because the witness has not qualified himself to answer.

Ans. I would; yes, sir.

Cross-examination:

Q. What is your business now and where are you engaged in it now?

Ans. At 416 and 418 Wazee street, in the livery and horse

203 business, Denver.

ANDREW C. WRIGHT.

Subscribed and sworn to before me this 23rd day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant also produced SAMUEL LEACH, a witness on his behalf in rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Samuel Leach; age, 44 years; occupation, merchandising and flour & feed business, Wazee and Sixteenth streets, and reside in Denver, Arapahoe county, Colorado.

Q. How long have you resided in Denver?

Ans. Eight years.

Q. Do you know Joseph Gottlieb, the complainant in this cause; if yea, how long have you known him and where has he resided during that time?

Ans. I have known him here in Denver as a business man on Blake street for the last eight years.

Q. Do you know Mr. Gottlieb's reputation for truth and veracity in the community where he resides?

Ans. I have never heard it questioned at all.

Def't's counsel objects to the answer as irresponsive.

Q. Explain what you mean when you say that you never heard his reputation for truth and veracity questioned.

Def't's counsel objects because it is leading and because the witness' answer admits of no explanation.

204 Ans. Well, I have never heard anything against him one way or the other. I have heard parties who dealt with him speak of him favorably.

Def't's counsel objects to answer as incompetent and immaterial.

Q. From your knowledge of Mr. Gottlieb's reputation for truth and veracity, would you believe him under oath where the matter in controversy involved his private and personal interests?

Def't's counsel objects, because the witness has not shown himself competent to answer it.

Ans. I should believe him under oath from what I know of his reputation.

No cross-examination.

SAM'L LEACH.

Subscribed and sworn to before me this 23d day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant's counsel also produced JOSEPH T. CORNFORTH, a witness on his behalf in rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Joseph T. Cornforth; age, 43 years; occupation, fruit dealer, and reside in Denver, Arapahoe county, Colorado.

Q. Have you connection with and what is your connection with the board of trade in Denver?

Ans. I was one of the organizers of the board of trade and its first president.

Q. How long have you resided in Denver?

205 Ans. Between seven and eight years permanently.

Q. Do you know Joseph Gottlieb, the complainant; if yea, how long have you known him and where has he resided during that time?

Ans. I have known him for about eight years and he has resided in Denver during that time.

Q. Do you know Mr. Gottlieb's reputation for truth and veracity in the community where he resides?

Ans. Well, I only know it individually and from the transactions I have had with Mr. Gottlieb, though small.

Q. From your knowledge of Mr. Gottlieb's reputation for truth and veracity, what is his reputation in that respect?

Def't's counsel objects because the witness is incompetent to answer the question, as shown by his previous answer, and because the question does not call for general reputation.

Ans. I have never heard anything against Mr. Gottlieb's truth and veracity.

Q. From what you know of his reputation for truth and veracity would you believe him under oath when the matter in controversy involved his personal and private interests?

Def't's counsel objects because the witness has not qualified himself to answer it.

Ans. Yes; I would.

No cross-examination.

JOSEPH T. CORNFORTH.

Subscribed and sworn to before me this 23d day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

206 Complainant's counsel also produced CARLOS GOVE, a witness on his behalf in rebuttal, who, being by me first duly sworn *by me* to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Charles Gove; age, 66 years; occupation, gunsmith, and reside in Denver, Arapahoe county, Colorado.

Q. How long have you resided in Denver?

Ans. I came here in 1860 and my family in 1864.

Q. Do you know Joseph Gottlieb, the complainant; if yea, how

long have you known him and where has he resided during that time?

Ans. I could not tell exactly the first acquaintance I had with Mr. Gottlieb, but have known him, I should suppose, six years; might have known him longer. I think he has resided in Denver during that time?

Q. Do you know Mr. Gottlieb's reputation for truth and veracity in the community where he resides?

Ans. I never heard anything against him.

Def't's counsel objects because it is irresponsive.

Q. Have you been familiarly acquainted with Mr. Gottlieb and his neighbors during the time of which you speak?

Def't's counsel objects because it is immaterial and irrelevant.

Ans. I don't know anything in regard to his neighbors at all any farther than the business transactions I've had with him.

Q. The last above question repeated.

Def't's counsel objects for same reasons last above stated.

Ans. I don't know as I know who his neighbors were or who was doing business next to him.

Q. From what you know of Mr. Gottlieb's reputation for truth and veracity do you consider that reputation good or bad?

207 Def't's counsel objects because the witness has not qualified himself to answer it and because it appears that the witness does not know his general reputation in this community.

Ans. I consider it good.

—. From your knowledge of Mr. Gottlieb's reputation for truth and veracity would you believe him under oath when the matter in controversy involved his personal and private interests?

Def't's counsel objects for reasons last above stated.

Ans. I would.

No cross-examination.

CARLOS GOVE.

Subscribed and sworn to before me this 23d day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Claimant's counsel produced ANDREW C. HAYNES, a witness on his behalf in rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Andrew C. Haynes; my age, 41 years; occupation, commission merchant, and reside in Denver, Arapahoe county, Colorado.

Q. Are you acquainted with Joseph Gottlieb; if so, how long have you known him?

Ans. I am acquainted with him and have known him about eight years.

Q. Where did he live when you first knew him?

208 Ans. On Blake street, between 15th and 16th street-, in Denver.

Q. And where has he lived since you knew him?

Ans. He has lived there all the time since I knew him, I think.

Q. Where were you employed during the time that you knew him, and by whom and in what capacity were you employed?

Ans. I was employed during that time nearly opposite Mr. Gottlieb's place of business and opposite, I think, from where he lived. I was employed by Isaac Brinker as his book-keeper.

Q. How far is your present place of business from where Mr. Gottlieb formerly lived?

Ans. Well, just around the corner, on 15th street; probably about one block distant.

Q. Do you know where Mr. Gottlieb now lives?

Ans. No, sir; I do not.

Q. Are you acquainted with Mr. Gottlieb's reputation for truth and veracity in the city of Denver?

Ans. No, sir; I am not acquainted with his reputation, never having heard it questioned, and would believe anything Mr. Gottlieb would tell me.

Def't's counsel objects to so much of the answer as states "that the witness would believe anything Mr. Gottlieb would tell him," because it is irresponsive.

Q. If Mr. Gottlieb's reputation for truth and veracity was bad in the neighborhood in which he resided during the time which you have known him and in which he did business, would you have heard of it necessarily from the character of the business you was engaged in and the nearness in which your business was located to his?

Def't's counsel objects because it is incompetent, irrelevant, and immaterial.

209 Ans. Well, I should not have heard from the character of my business, but would probably have heard it, being as near to him as I was.

Q. From your knowledge of the general reputation of Mr. Gottlieb'- truth and veracity in the neighborhood in which he resided since you have known him would you believe him under oath in a matter in which he was directly interested financially?

Def't's counsel objects because incompetent and because it now appears that the witness does not know his general reputation.

Ans. I would believe him.

No cross-examination.

ANDREW C. HAYNES.

Subscribed and sworn to before me this 23d day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant's counsel also produced E. KINSLEY SMITH, a witness on his behalf in rebuttal, who, being first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is E. Kinsley Smith; age, 44 years; occupation, paper dealer, and reside in Denver, Aropahoe county, Colorado.

Q. Are you acquainted with Joseph Gottlieb, the complainant; and, if so, how long have you known him?

Ans. I am acquainted with him and have known him about ten years.

Q. Where has Mr. Gottlieb lived since you have known him?

Ans. In the city of Denver.

210 Q. During the time which you have known him about how far has Mr. Gottlieb's place of business been from your place of business?

Ans. Well, late years it has been in the same block.

Q. During this time and do you now know Mr. Gottlieb's general reputation for truth and veracity in the neighborhood in which he has resided among his neighbors?

Ans. I have never heard anything against Mr. Gottlieb's reputation.

Def't's counsel objects as irresponsive.

Q. What is his general reputation for truth and veracity among his neighbors in the neighborhood in which he has resided and done business during the time you have known him, so far as you know?

Def't's counsel objects as incompetent, 1st, because it does not call for general reputation, and, 2nd, because it appears that the witness does not know his general reputation.

Ans. I never have heard it questioned; his reputation is good, so far as I know.

Def't's counsel objects to the answer as irresponsive.

Q. From what you know of Mr. Gottlieb's general reputation for truth and veracity among his neighbors in the neighborhood in which he has resided and done business while you have known him, would you believe him under oath in a matter in which he was directly and financially interested?

Def't's counsel objects for same reasons stated to last question.

Ans. I would.

No cross-examination.

E. KINSLEY SMITH.

211 Subscribed and sworn to before me this 23d day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

By consent of counsel the further taking of testimony in rebuttal is continued until Tuesday, the 26th day of September, A. D. 1882, at ten o'clock a. m., at my office, in Denver.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Tuesday, the 26th day of September, A. D. 1882, at ten o'clock a. m., at my office, counsel for the respective parties being present, complainant produces CHARLES H. SCOTT, a witness in his behalf on rebuttal, recalled, who, being by *by* me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, — :

Q. How long have you resided in the city of Denver?

Ans. Since 1873.

Q. Do you know Joseph Gottlieb; and, if so, how long have you known him?

Ans. I do; I think I have known him since about 1874.

Q. Do you know where his place of business has been since that time and where he has resided?

Ans. I know where his place of business has been, but not where he has resided all the time. I know that he has been a resident of Denver most of that time.

Q. What is Mr. Gottlieb's general reputation for truth and veracity in this community?

212 Def't's counsel objects as incompetent because the proper foundation has not been laid.

Ans. So far as I know, good.

CHAS. H. SCOTT.

Subscribed and sworn to before me this 26th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant's counsel also produces JOHN L. DAILEY, a witness in his behalf in rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is John L. Dailey; my age is 49 years; occupation, treasurer of Arapahoe county, and reside in Denver, Colorado.

Q. How long have you resided in Denver?

Ans. Since 1859.

Q. Do you know Joseph Gottlieb; and, if so, how long have you known him?

Ans. I do know him; have known him for some time, but cannot state exactly how long. I have known him at least 10 years.

Q. Have you known where his place of business was and where he resided?

Ans. I have known where his place of business was, but do not know where he resided, except that I have known him to be a resident of Denver most of the time.

Q. What is his general reputation for truth and veracity in this community?

Def't's counsel objects as incompetent and because it does not
213 yet appear that the witness does not know Mr. Gottlieb's general reputation in this community for truth and veracity.

Ans. Good, so far as I know.

Cross-examination:

Q. Do you know what Mr. Gottlieb's general reputation is in this community among business men, as well as his immediate neighbors, for truth and veracity, or have you based your opinion upon your own individual knowledge and acquaintance?

Compl't's counsel objects for the ground that it is double, and that it is not proper cross-examination.

Ans. I have based my opinion on my own knowledge and acquaintance.

JOHN L. DAILEY.

Subscribed and sworn to before me this 26th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainants also produce P. FRANKLIN, a witness in his behalf in rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is P. Franklin; my age is 51 years; occupation, wholesale dealer — crockery and glassware, and reside in Denver, Arapahoe county, Colorado.

Q. How long have you resided in Denver?

Ans. About eleven years.

Q. Do you know Joseph Gottlieb? If so, how long have you known him?

Ans. I do. About 10 years.

214 Q. Have you been in business all that time here?

Ans. I have.

Q. What is Mr. Gottlieb's general reputation for truth and veracity in this community?

Def't's counsel objects as incompetent because the proper foundation has not been laid for it.

Ans. Good.

Cross-examination:

Q. What do you understand by the general reputation of a man for truth and veracity?

Ans. By being well spoken of by the better class of community.

Q. Do you know what his general reputation for truth and veracity is in this community?

Ans. I think I do.

Q. Are not his principal acquaintances in this city among the Jewish people?

Ans. Not that I know of.

Q. How many religious societies are there among the Jewish people in this city, naming them?

Compl't's counsel objects as immaterial and incompetent and not cross-examination.

Ans. I have never counted them. I wouldn't know them all.

Q. What is your nationality, and to which of those societies do you belong?

Compl't's counsel objects for the same reasons last above stated.

Ans. I am a German, belonging to the Independent Order Bnai Brith, Kesher, Temple Emanuel, Standard club; don't recollect any more just at present.

Q. To which of those societies does Mr. Gottlieb belong?

215 Compl't's counsel objects for same reasons last above stated.

Ans. I recollect but one, Bnai Brith.

Q. Is not that a life insurance society?

Compl't's counsel objects for same reasons last above given.

Ans. No, sir.

Q. Do you not know that he has been denied admittance as a member of the other Jewish societies which you have mentioned?

Compl't's counsel objects for the same reasons last above stated.

Ans. He has not.

Q. Who requested you to testify in this case as to Mr. Gottlieb's reputation for truth and veracity?

Compl't's counsel objects for same reasons last above stated.

Ans. To answer this I will have to make a statement. I met Mr. Gottlieb about one hour ago. He requested me to step up to Mr. Webster's office and be examined as regards to what I know of him.

Q. Was that all he said?

Ans. Yes, sir.

Q. Give the names of the prominent men of this city whom you say you have heard speak well of Mr. Gottlieb's reputation for truth and veracity.

Ans. They are too many to recollect them.

Q. Mention a few of them.

Ans. John R. Hanna, William Barth, S. N. Wood. I can't think of any others at present.

Q. Are not John R. Hanna and William Barth officers of the City National bank, where Mr. Gottlieb does his banking business?

216 Ans. I know them to be officers of the bank, but I don't know where Mr. Gottlieb does his banking business.

Q. Did you ever hear either of these gentlemen whom you have mentioned speak of Mr. Gottlieb's reputation for truth and veracity?

Ans. I don't recollect anything but that they said he was a good man.

Q. How did they come to talk to you about his being a good man?

Ans. In general conversation.

Q. When and where did you have this conversation?

Ans. I don't recollect, but it must be some years ago.

Q. What was Mr. Wood's business at the time of your conversation with him?

Ans. He was cashier of the First National Bank of Denver.

Q. When did Mr. Wood become the cashier of that bank, or near as you can give it?

Ans. I believe on the 1st of January this year.

P. FRANKLIN.

Subscribed and sworn to before me this 26th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

By consent of counsel the further taking of testimony in rebuttal is continued until Wednesday, the 27th day of September, A. D. 1882, at ten o'clock a. m., at my office.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Wednesday, the 27th day of September, A. D. 1882, at the hour of ten o'clock a. m., at my office, counsel for both parties being present, complainant produced JOHN R. HANNA, a witness on his behalf in rebut-

217 tal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is John R. Hanna; age, 45 years; occupation, a banker, and reside in Denver, Arapahoe county, Colorado.

Q. How long have you resided in Denver?

Ans. Eleven years, and been engaged in banking since 1872.

Q. Do you know Joseph Gottlieb; and, if yea, how long have you known him?

Ans. I know him; have known him for six or eight years; I have known him as a resident of Denver.

Q. What is Mr. Gottlieb's general reputation for truth and veracity in this community?

Def't's counsel objects as incompetent because it does not appear that the witness knows that general reputation.

Ans. As far as my knowledge extends I would say it was good.

JOHN R. HANNA.

No cross-examination.

Subscribed and sworn to before me this 27th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainants also produced FRANK CHURCH, a witness in his behalf on rebuttal, who, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Frank Church; age, 39 years; occupa-
218 tion, merchant, and reside in Denver, Arapahoe county, Colorado.

Q. Are you acquainted with the complainant, Joseph Gottlieb; and, if so, how long have you known him?

Ans. I am acquainted with him and have been acquainted with him about 12 years, I think.

Q. How long have your been doing business at the location where you are now doing business?

Ans. Eight or nine years.

Q. During this time how far from your place of business was the residence of Mr. Gottlieb?

Ans. I should think about one block.

Q. During this time have you heard Mr. Gottlieb spoken of by his neighbors in the neighborhood in which he resided?

Ans. I think that I have.

Q. What is and what has been Mr. Gottlieb's general reputation for truth and veracity among his neighbors in the neighborhood in which he resided?

Def't's counsel objects as incompetent, because it does not appear that the witness knows his general reputation.

Ans. I don't know that I have heard anything against him amongst his neighbors.

Q. From Mr. Gottlieb's general reputation for truth and veracity among his neighbors in the neighborhood in which he has resided since you have known him would you believe Mr. Gottlieb under oath in a matter in which he was financially and directly interested?

Def't's counsel objects for the same reasons last above stated.

Ans. I think I should.

Cross-examination:

Q. Have you ever heard anything said against Mr. Gott-
219 lieb's reputation in this city?

Ans. Comp't's counsel objects because it is not proper cross-examination and immaterial.

Ans. I have.

Q. Have you not heard more against his reputation than in favor of it?

Compl't's counsel objects for the same reasons last above stated.

Ans. I think I have.

FRANK CHURCH.

Subscribed and sworn to before me this 27th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant's counsel now offers in evidence a certified copy of a warranty deed from Samuel H. Thatcher to Lewis C. Thatcher, dated November 13, 1876, conveying lands in El Paso county, and also an affidavit of the complainant that the original of said deed is not in his possession and not in his power to produce, which is hereto attached, marked Exhibit Q.

To which defendant's counsel objects because it is irrelevant, immaterial, and not proper rebuttal testimony.

Complainant's counsel now offers in evidence a certified copy of a quitclaim deed from Sam'l H. Thatcher to Lewis C. Thatcher, dated November 13th, 1876, of lands in Elbert county, and also an affidavit of the complainant that the original of said deed is not in his possession and not in his power to produce, which is hereto attached and marked Exhibit R.

220 To which def't's counsel objects for same reasons last above stated.

By agreement of counsel it is stipulated that no objections shall be made on the final hearing of this cause to the non-production of original conveyances heretofore offered in evidence on either side, including the power of attorney that was offered in evidence, for which certified copies were offered.

JOHN W. WEBSTER, *Examiner.*

Complainant's counsel also produced GEORGE RUBLE, a witness in his behalf on rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is George Ruble; my age is 47 years; my occu-

pation is dealer in hardware, saddlery, leather, &c., and I reside in Denver, Arapahoe county, Colorado.

Q. Do you know the plaintiff, Joseph Gottlieb; and, if so, about how long have you known him?

Ans. I do; have known him about 14 years.

Q. During the time you have known Mr. Gottlieb, about how far did he reside from your store in the city of Denver or how far from the place you did business?

Ans. About one block and a half.

Q. Do you know the general reputation of Mr. Gottlieb among his neighbors in the neighborhood in which he resided while you have known him?

Ans. I do.

Q. What is that general reputation, good or bad?

221 Ans. Good, as far as I know.

Cross-examination:

Q. Do you base your opinion of his reputation upon your own personal knowledge or upon what you have heard others say of him in this city?

Ans. Upon my own personal knowledge.

GEO. RUBLE.

Subscribed and sworn to before me this 27th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

Complainant's counsel announces that this closes their testimony in rebuttal this 27th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

EXHIBIT A. J. W. Webster, Examiner.

Order of Trial.

JOSEPH GOTTLIEB *vs.* SAMUEL H. THATCHER. } 3544. Attachment.

At this day comes said plaintiff, by S. E. Browne, Esq., and A. S. Blake, Esq., his attorneys, and the said defendant, by V. D. Markham, Esq., his attorney, also comes; and thereupon comes a jury, to wit, Henry S. Simmons, Irving Williams, Benjamin C. Adams, Mortimer L. Pierce, Richard Begar, Nelson E. Woolman, Jeremiah J. Cook, Thomas Walker, Jones W. Boot, Edward B. Bowles,

222 Lansel McIntire, and Oliver P. Hamilton, twelve good and lawful men, and they are duly selected and tried, impanelled, and sworn to well and truly try the issues herein joined and a true verdict give according to the evidence.

And the said jurors, having heard the evidence produced herein and being duly instructed by the court, retire to their room to consider of their verdict.

And afterwards and on this same day come again said jurors, and on their oaths do say they find the issues herein joined for the said plaintiff, and assess his damages by occasion of the premises in his declaration mentioned at the sum of two thousand one hundred and seventy-one dollars ($2,171).

EXHIBIT B. J. W. Webster, Examiner.

Order of Judgment.

JOSEPH GOTTLIEB
vs.
SAMUEL H. THATCHER. } 3544. Attachment.

At this day comes said plaintiff, by S. E. Browne, Esq., and A. S. Blake, Esq., his attorneys, and the said defendant, by V. D. Markham, Esq., his attorney, also comes; and thereupon, on his motion upon the verdict of the jury heretofore rendered herein, it is considered by the court that said plaintiff do have and recover of and from the said defendant the sum of two thousand one hundred and seventy-one dollars, his damages aforesaid, in form aforesaid assessed, and his costs by him in this behalf expended, to be taxed, and have execution therefor.

223 EXHIBIT C. J. W. Webster, Examiner.

Affidavit of Attachment.

STATE OF COLORADO, } *ss:*
Arapahoe County,

Joseph Gottlieb, of said county, being duly sworn, doth depose and say that Samuel H. Thatcher, against whom the said Joseph Gottlieb is about to sue out an attachment, is indebted to him in a sum not exceeding five thousand dollars, to wit, the sum of thirty-one hundred and thirty-six $\frac{50}{100}$ dollars, and that the said demand is evidenced by a promissory note signed by said Thatcher, and that said Samuel Thatcher has fraudulently conveyed his property so as to hinder and delay his creditors in the collection of their claims against him. Said promissory note bears date November 18th, A. D. 1875, by reference to a mortgage securing the payment thereof, is due 12 months after the date thereof, and bears interest at the rate of five per cent. per month from date until paid, the interest due and payable monthly, and is signed also by one Zella Glenmore: and further affiant saith not.

JOSEPH GOTTLIEB.

Sworn and subscribed to before me this 25th day of November, A. D. 1876.

ROBERT CHALFANT, *Clerk.*

(Endorsed:) 3544. Joseph Gottlieb *vs.* Samuel H. Thatcher. Affidavit of attachment. Filed Nov. 25th, 1876. Robert Chalfant, clerk, by Chas. W. Taylor, deputy. Browne and Putnam.

224 EXHIBIT D. J. W. Webster, Examiner.

Writ of Attachment.

STATE OF COLORADO, } ss:
Arapahoe County, }

The people of the State of Colorado to the sheriff of Arapahoe county, Greeting:

Whereas Joseph Gottlieb hath complained on oath to Robert Chalfant, clerk of the district court within and for the county of Arapahoe, that Samuel H. Thatcher is justly indebted to the said Joseph Gottlieb to the amount of thirty-one hundred and thirty-six dollars and fifty cents ($3,136.50), and oath having also been made that the said Samuel H. Thatcher has fraudulently conveyed his property so as to hinder and delay his creditors in the collection of their claims against him, and the said Joseph Gottlieb having given bond and security according to the directions of the act in such cases made and provided, we therefore command you that you attach so much of the estate, real and personal, of the said Samuel H. Thatcher to be found in your county as shall be of value sufficient to satisfy the said debt and costs, according to the complainant, and such estate so attached in your hands to secure so as to provide that the same may be liable to further proceedings thereupon according to law, at a court to be holden at Denver, for the county of Arapahoe, on the first Monday of April next, so as to compel the said Samuel H. Thatcher to appear and answer to the complaint of the said Joseph Gottlieb, and that you also summon Mrs. A. C. McCormick, Horace A. Gray, and Leonard H. Eicholtz, as garnishee, to be and appear at said court on the said first Monday of April next, then and there to answer to what may be objected against them, when and where you shall make known to said court how you have executed this writ, and have you then and there this writ.

225 Witness Robert Chalfant, clerk of said court, and the [SEAL.] seal thereof, at Denver aforesaid, this 25th day of November, A. D. 1876.

ROBERT CHALFANT, *Clerk,*
By CHAS. W. TAYLOR,
Deputy Clerk.

(Endorsed:) 3544. Joseph Gottlieb *versus* Samuel H. Thatcher. Attachment writ. Filed in the clerk's office district court this 8th day of January, A. D. 1877. Robert Chalfant, clerk, by Chas. W. Taylor, deputy clerk. Browne and Putnam, plaintiff's attorneys.

EXHIBIT E. J. W. Webster, Examiner.

Return of Sheriff on Attachment.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I have duly executed this writ by levying upon the following-described real estate, "to wit": Lot twenty-seven, in block seventy-eight; lot four, in block one hundred and sixty-five, both in the east division of the city of Denver; and the northeast quarter (¼) and southwest quarter (¼) of section twenty-four (24), township one (1) south, range sixty-seven (67) west; the east half (½) of the southeast quarter (¼), section twenty-six (26), township one (1) south, range sixty-seven (67) west; also the southeast quarter (¼) section twenty-four (24), township three (3) south, range sixty-seven (67) west, together with all and singular the appurtenances thereunto belonging, this 25th day of November, A. D. 1876, and by reading and delivering a true copy of the within to Mrs. A. C. Mc-
226 Cormick and Horace A. Gray, as garnishee, on the 25th day of November, A. D. 1876, and to Samuel H. Thatcher on the 27th day of November, A. D. 1876, and to Leonard H. Eicholtz, as garnishee, on the 11th day of December, A. D. 1876.

D. J. COOK, *Sheriff,*
By W. A. SMITH,
Under Sheriff.

Sheriff's Fees.

Levying	2 00
4 summons	4 00
Mileage	1 50
	25
	7 75

EXHIBIT F. J. W. Webster, Examiner.

Narrative.

STATE OF COLORADO, } ss:
Arapahoe County, }

In the District Court of Arapahoe County, of the April Term, in the year of our Lord one thousand eight hundred and seventy-seven.

Joseph Gottlieb, plaintiff in this suit, by Browne and Putnam, his attorneys, complains of Samuel H. Thatcher, the defendant, who was attached, etc., in a plea of trespass on the case on promises, for that whereas the said defendant heretofore, to wit, on the 18th day of November, in the year of our Lord one thousand eight hundred and seventy-five, at Denver city, to wit, at Denver city, in the county of Arapahoe, made his certain promissory note in writing with one Zella

Glenmore and then and there delivered the same to plaintiff, in and by which said note said defendant Zella Glenmore, by the name, style, and description of Zella Glenmore, and Sam. H. Thatcher promised to pay to the order of said plaintiff, by the name, style, and description of Joseph Gottlieb, the sum of twenty-seven hundred
227 dollars, on or before one year after the date thereof, at plaintiff's store in Denver, with interest at the rate of five per cent. per month from date until paid, the interest payable monthly, for value received; by means whereof and by force of the statute in such case made and provided the said defendant became liable to pay said plaintiff the said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to said plaintiff according to the tenor and effect, true intent and meaning, of said note, to wit, at the place aforesaid.

Said promissory note was made, executed, and delivered by defendant and said Zella Glenmore to the plaintiff on the 18th day of November, A. D. 1875, but bears date only in 1875.

And whereas also the said defendant afterwards, to wit, on the 25th day of November, in the year of our Lord one thousand eight hundred and seventy-six, to wit, at Denver, in said county, became and was indebted to the plaintiff in a large sum of money, to wit, five thousand dollars, for money before that time lent and advanced to and paid, laid out, and expended for said defendant by said plaintiff at said defendant'- request, and for money before that time had and received by said defendant to and for the use of said plaintiff; and also in — like *a* sum for goods, wares, and merchandise before that time sold and delivered by said plaintiff to said defendant at like special instance and request; and also in the like sum for the labor, care, and diligence of said plaintiff before that time done and performed by said plaintiff for said defendant and at the like instance and request of said defendant, and in the like sum for interest upon and for the forbearance of divers sum- of money due and owing from said defendant to said plaintiff, and, being so indebted, said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff said last-mentioned sums
228 of money when thereunto afterwards requested, yet the said defendant, not regarding his said promises and undertakings, but contriving, etc., although often requested so to do, has not paid said plaintiff either of said sums of money or any part thereof, but so to do has hitherto wholly neglected and refused and still does neglect and refuse, to the damage of said plaintiff of five thousand dollars, and therefore he brings suit, etc.

By BROWNE AND PUTNAM,
Attorneys for Plaintiff.

Copy of Note and Account Sued Upon.

$2,700.00. 1875.

On or before one year after date, for value received, we or either of us promise to pay to Joseph Gottlieb or order two thousand seven

hundred dollars, with interest at the rate of five per cent. per month from date until paid; interest due and payable monthly.

ZELLA GLENMORE.
SAM. H. THATCHER.

Defendant will take notice that the promissory note described in the first count of this declaration will be the only evidence offered under the common courts.

BROWNE AND PUTNAM,
Plaintiff's Attorneys.

(Endorsed:) 3544. District court of Arapahoe county. Joseph Gottlieb *vs.* Samuel H. Thatcher. *Narr.* Filed this 25th day of November, 1876. Rob't Chalfant, clerk, by Chas. W. Taylor. Browne and Putnam, plaintiff's attorneys.

EXHIBIT G. J. W. Webster, Examiner.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

The People of the State of Colorado to the sheriff of Arapahoe county, Greeting:

229 We command you that of the lands and tenements, goods and chattels, and chattels real of Samuel H. Thatcher, defendant, in your county, you cause to be made the sum of two thousand one hundred and seventy-one dollars and — cents, which Joseph Gottlieb, plaintiff, lately, in the district court of said Arapahoe county, at a term thereof begun and held at Denver, in said county, on the third Tuesday of April, A. D. 1877, recovered against the said defendant and which by the said court was adjudged to the said plaintiff for his damages by him in this behalf sustained.

And also the further sum of — dollars and — cents which were adjudged to the said plaintiff for his costs and charges in that behalf expended, included in the annexed fee bill, whereof the said defendant was convict, as appears to us of record, and have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid and make a return of this writ, with an indorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness Robert Chalfant, clerk of the said court, and the [SEAL.] seal thereof, at Denver, in said county, this 24th day of July, A. D. 1877.

ROBERT CHALFANT, *Clerk,*
By CHAS. W. TAYLOR,
Deputy Clerk.

EXHIBIT G 1.

Whole No. —; Journal 12, page —; Fee Book 4, page 120.

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court, April Term, A. D. 1877.

In the Matter of JOSEPH GOTTLIEB *versus* SAM. H. THATCHER.

230 *Plaintiff's Costs.*

Clerk's fees	
Appr. att'ys, .60; ent. suit on docket, .70; bond for costs, —; issuing 3 writ- of att., 9 cop's, 7.50; 3 subpœnas, 1.20	10 00
Dedimus, —; tak'g and filing 2 affi., .40; dedimus, 1.00	1 40
Tak'g and appr. bond, 1.00; filing papers on appeal, —; assess. dam., —; swear. 2 jury, .50; swear. 4 wit., .40	1 90
Swear bailiff, .40; ent'g 9 orders, 4.50; filing 22 papers, 2.20; dis., —	7 10
Ent. final judg't, .25; ent. sat., .25; ent. —; issuing ex., 1.00	1 50
Dock'g and filing same, .20; ent. sheriff's return, .45; fee bill, .50; tax costs, —	1 15
Recording bond, 1.00; ack'm't, .50	1 50
	24 55
Jury fees, 2 juries, April term, 1877	10 00
Witness fees	
Commissioners' fees	10 00
Sheriff's fees	15 65
	$60 20

I, Robert Chalfant, clerk of the district court of said county of Arapahoe, do hereby certify that the above is a true copy from my fee book of plaintiff's costs.

Given under my hand and the seal of said court.

[SEAL.] ROBERT CHALFANT, *Clerk,*
By CHAS. W. TAYLOR,
Deputy Clerk.

To the sheriff of Arapahoe county:

You will please levy only upon the property described in your returns on the writ of attachment in the within-entitled cause.

ROBERT CHALFANT, *Clerk.*
By CHAS. W. TAYLOR, *Deputy.*

(Indorsed:) 3544. April term, A. D. 1877. Execution, *fi. fa.*, and fee bill. District court. Fee Book 4, page 120. Journal 12, page 110. Whole No. —.

231 JOSEPH GOTTLIEB
vs.
SAM. H. THATCHER.

Deb't	
Damages	$2,171 00
Costs	60 20
	$2,231 20
In'st	12

The sheriff will collect interest from July 23rd, 1877.

ROBERT CHALFANT, *Clerk.*
—— ——, *Deputy.*

Sheriff's Fees.

Levying execution	$2 00
Advertising property	11
— miles travel	1 50
Commission on $1,800.00	25 50
Returning execution	25
Certificate of purchase	2
Total	$42 25

Filed this 17 day of August, A. D. 1877.

ROBERT CHALFANT, *Clerk.*
BROWNE AND PUTNAM, *Attorneys.*

EXHIBIT G 2.

Return of Sheriff on Execution.

Received July 24, 1877, at 1.40 p. m.

DAVID J. COOK, *Sheriff,*
By JNO. WALKER, *Deputy.*

STATE OF COLORADO, }
County of Arapahoe, } *ss*:

I have duly executed the within writ by levying upon lot twenty-seven (27), in block seventy-eight (78), and lot four (4), in block one hundred and sixty-five (165), both in the east division of the city of Denver, and the northeast quarter and the southwest quarter of section twenty-four (24), township one (1) south, of range sixty-seven (67) west, and the east half of the southeast quarter of section twenty-six (26), township one (1) south, of range sixty-seven (67) west, and also the southeast quarter of section twenty-four
232 (24), township (3) south, of range sixty-seven (67) west, all in the county aforesaid, together with all and singular the appurtenances thereunto belonging, which I advertised according to law for the space of twenty days in the Denver Tribune, a daily newspaper printed and published in said county, and on the 15th

day of August, A. D. 1877, at ten o'clock in the forenoon of said day, at the front door leading to the court-house in said county, I proceeded to sell and did sell said property at public auction, and Joseph Gottlieb bid the sum of two hundred and forty dollars *of* the N. E. $\frac{1}{4}$ of sec. 24, T. 1, R. 67, and two hundred and forty dollars for the S. W. $\frac{1}{4}$ of sec. 24, T. 1, R. 67, and eighty dollars for the E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of sec. 26, T. 1, R. 67, and two hundred and forty dollars for the S. E. $\frac{1}{4}$ of sec. 24, T. 3, R. 67, and nine hundred dollars for lot 27, B. 78, E. D., and the sum of one hundred dollars for lot 4, block 165, E. D., which sums being the highest and best bids for said lots, tracts, or parcels of land respectively, they were each struck off and sold to him, the said Joseph Gottlieb, of which sum total of said amounts I have paid to the plaintiff the sum of sixteen hundred and ninety-four and $\frac{10}{100}$ dollars in part satisfaction of this judgment, and also the further sum of sixty and $\frac{20}{100}$ dollars, court costs, as per his receipt attached thereto; three and $\frac{45}{100}$ dollars I have paid into court as clerk's fees on fee bill, and the balance of forty-two and $\frac{25}{100}$ dollars I retain as my costs on this execution, which I now return satisfied in part, as above noted, August 17, 1877.

DAVID J. COOK, *Sheriff*,
By JOHN WALKER, *Deputy*.

EXHIBIT G 3.

Proof of Publication.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

233 I, Herman Beckurts, of said county of Arapahoe, do hereby certify that I am the publisher and proprietor of the Denver Tribune, a daily newspaper printed and published in Denver, in said county and State; and I further certify that the notice, of which the annexed is a true copy, has been published in said newspaper for twenty successive days, and that the first publication of said notice was in said paper bearing date the 24th day of July, A. D. 1877, and the last publication of said notice was in said paper bearing date the 15th day of August, A. D. 1877.

In witness whereof I have hereto set my hand this 15th day of August, A. D. 1877.

HERMAN BECKURTS.

Fees, 10.50, paid.

Sheriff's Sale.

By virtue of a certain special writ of execution, to me directed, from the district court of the county of Arapahoe, in the State of Colorado, in favor of Joseph Gottlieb and against Samuel H. Thatcher, whereby I am commanded to make the sum of twenty-one hundred and seventy-one dollars damages and the further sum of sixty dollars and twenty cents costs of suit, I have, as by said special writ commanded, levied upon the following-described real estate

as the property of the said Samuel H. Thatcher, to wit, lot twenty-seven (27), in block seventy-eight (78), and lot four (4), in block one hundred and sixty-five (165), both in the east division of the city of Denver, and the northeast quarter and the southwest quarter of section twenty-four (24), township one (1) south, of range sixty-seven (67) west, and the east half of the southeast quarter of section twenty-six (26), township one (1) south, of range sixty-seven west, and also the southeast quarter of
234 section twenty-four (24), township three (3) south, of range sixty-seven (67) west, all in the county of Arapahoe aforesaid, together with all and singular the appurtenances thereunto belonging, which, or so much thereof as may be necessary to pay the above-mentioned sum of damages and costs, together with interest and accruing costs, I shall expose and sell at public auction to the highest and best bidder, for cash, at the east front door leading to the court-house in the city of Denver, in said county, on the 15th day of August, A. D. 1877, at ten o'clock in the forenoon of said day.

DAVID J. COOK,
Sheriff of Arapahoe County.

Dated July 24, 1877.

EXHIBIT "H." J. W. Webster, Examiner.

Certificate of Sale.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

Samuel H. Thatcher, by sheriff,
to
Joseph Gottlieb.

Filed for record at 2½ o'clock p. m., August 17th, 1877.
W. C. LOTHROP, *Recorder.*

I, David J. Cook, sheriff of said county, do hereby certify that, by virtue of a certain special writ of execution to me directed from the district court of said county at the suit of Joseph Gottlieb, plaintiff, *and* against Samuel H. Thatcher, defendant, I did, on the 15th day of August, 1877, expose and sell at public auction certain lots, tracts, or parcels of land, in said county situate, as the property of the said Samuel H. Thatcher, described as follows, to wit: Lot twenty-seven (27), in block seventy-eight (78);
235 lot four (4), in block one hundred and sixty-five (165), both in the east division of the city of Denver, and the northeast quarter and the southwest quarter of section twenty-four, township one south, range sixty-seven west; the east half of the southeast quarter of section twenty-six, township one south, range sixty-seven west, and the southeast quarter of section twenty-four, township three south, range sixty-seven west, and that Joseph Gottlieb bid the sum of nine hundred dollars for said lot twenty-seven,

in block seventy-eight, and the sum of one hundred dollars for said lot four, in block one hundred and sixty-five, and the sum of two hundred and forty dollars for *for* said northeast quarter of section twenty-four, township one south, range sixty-seven west, and the sum of two hundred and forty dollars for said southwest quarter of section twenty-four, township one south, range sixty-seven west, and the sum of eighty dollars for said east half of the southeast quarter of section twenty-six, township one south, range sixty-seven west, and the sum of two hundred and forty dollars for said southeast quarter of section twenty-four, township three south, range sixty-seven west, which being the best and highest bids respectively, the said lots, tracts, or parcels of land were struck off and sold to the said Joseph Gottlieb, and that the said Joseph Gottlieb will be entitled to a deed for said premises so sold to him at the expiration of nine months from the day of sale thereof, unless the same be redeemed according to law.

Given under my hand and seal this 15th day of August, A. D. 1877.

DAVID J. COOK, [SEAL.]
Sheriff of Arapahoe County, Colorado.

Signed in duplicate.

236 STATE OF COLORADO, } *ss:*
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in Book 95, page- 107 & 108.

Witness my hand and official seal this 20th day of June, A. D. 1882.

[SEAL.] WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

EXHIBIT I. J. W. Webster, Examiner.

Sheriff's Deed.

Samuel H. Thatcher, by sheriff, }
to
Joseph Gottlieb. }

Filed for record at 8 o'clock a. m. August 1, 1878.
W. C. LOTHROP, *Recorder.*

Whereas Joseph Gottlieb did, at the April term, A. D. 1877, of the district court of the second judicial district of the State of Colorado, within and for the county of Arapahoe, recover a judgment against Samuel H. Thatcher for the sum of two thousand one hundred and seventy-one dollars and costs of suit, upon which judgment an ex-

ecution was issued, dated on the 24th day of July, A. D. 1877, directed to the sheriff of said county of Arapahoe to execute, and by virtue of said execution the said sheriff levied upon the lands hereinafter described, and the same were struck off and sold to Joseph
237 Gottlieb, he being the highest and best bidder therefor, and the time and place of sale thereof having been duly advertised according to law:

Now, therefore, know all by this deed that I, David J. Cook, sheriff of said county of Arapahoe, in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said Joseph Gottlieb, his heirs and assigns, the following-described tracts or parcels of land, to wit: Lot numbered twenty-seven, in block numbered seventy-eight; lot numbered four, in block numbered one hundred and sixty-five, both in the east division of the city of Denver, and the northeast quarter and the southwest quarter of section twenty-four, in township one south, range sixty-seven west; the east half of the southeast quarter of section twenty-six, in township one south, range sixty-seven west, and the southeast quarter of section twenty-four, in township three south, range sixty-seven west; all situate in said county of Arapahoe and State of Colorado; to have and to hold the said described premises, with all the appurtenances thereunto belonging, to the said Joseph Gottlieb, his heirs and assigns forever.

Witness my hand and seal this 19th day of July, A. D. 1878.

DAVID J. COOK, [WAFER SEAL.]
Sheriff of Arapahoe County, Colorado.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

I, John Walker, a notary public in and for said county, in the State aforesaid, do hereby certify that David J. Cook, sheriff of said county, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

238 Given under my hand and notarial seal this 19th day of July, A. D. 1878.

[NOTARIAL SEAL.] JOHN WALKER,
Notary Public.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in Book 104, at page 43.

Witness my hand and official seal this 20th day of June, A. D. 1882.

[SEAL.] WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

EXHIBIT J. John W. Webster, Examiner.

Warranty Deed.

Samuel H. Thatcher
to
Lewis C. Thatcher.

Filed for record at 3½ o'clock p. m. November 18th, 1876.
W. C. LOTHROP, *Recorder.*

This deed, made this thirteenth day of November in the year of our Lord one thousand eight hundred and seventy-six, between Samuel H. Thatcher of the county of Arapahoe and State of Colorado, of the first part, and Lewis C. Thatcher of the county of St. Louis and State of Missouri of the second part: Witnesseth that the said party of the first part, for and in consideration of the sum
239 of four thousand dollars, to the said party of the first part, in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and conveyed, and by these presents, does grant, bargain, sell, convey and confirm unto the said party of the second part his heirs and assigns forever, all the following-described lots or parcels of land, situate, lying and being in the county of Arapahoe, and State of Colorado, to wit:

City lot numbered twenty-seven (27) in block numbered seventy-eight (78) and lot numbered four (4) in block numbered one hundred and sixty-five (165) in the east division of the city of Denver, and the northeast quarter and the southwest quarter of section numbered twenty-four (24) and the east half of the southeast quarter of section numbered twenty-six (26) in township numbered one (1) south and the southeast quarter of section numbered twenty-four (24) in township numbered three (3) south all in range numbered sixty-seven (67) west.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances;

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part his heirs and assigns forever. And the said Samuel H. Thatcher party of the first part, for himself, his heirs, executors and

administrators, do- covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that
240 at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances of whatever kind or nature soever; and the above-bargained premises in quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year above written.

SAMUEL H. THATCHER. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Hutton Crater, a notary public in and for said county, in the State aforesaid, do hereby certify that Samuel H. Thatcher, who is personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this thirteenth day of November, A. D. 1876.

HUTTON CRATER,
Notary Public.

[NOTARIAL SEAL.]

241 STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in Book 88, at page 566.

Witness my hand and official seal this 6th day of July, A. D. 1882.

[SEAL.]

WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

EXHIBIT K. John W. Webster, Examiner.

Power of Attorney.

Lewis C. Thatcher
to
Samuel H. Thatcher.

Filed for record at 1 o'clock p. m. January 29th, 1878.
W. C. LOTHROP, *Recorder.*

Know all men by these presents that I, Lewis C. Thatcher, of the city of St. Louis, in the State of Missouri, have named, constituted, and appointed and do by these presents name, constitute, and appoint Samuel H. Thatcher, of Denver, in the State of Colorado, my true and lawful attorney for me and in my name, place, and stead to grant, bargain, sell, and convey with or without covenants and warranty, exchange for other lands or property, or otherwise dispose of to such person or persons and on such terms as shall to him seem best for my interest any and all lands and interests in lands belonging to me, wheresoever the same may be situate, in the State
242 of Colorado, and to make, execute, and deliver any deed or deeds or other instruments in writing therefor; also to purchase and acquire by exchange of other lands any lands in the State of Colorado as shall seem best to my said attorney, such lands to be acquired in my name and the title thereto to be vested in me, giving and granting unto my said attorney full power and authority to do and perform whatsoever is or shall be necessary or requisite to be done in the premises to all intents and purposes the same as I myself might lawfully do if personally present and acting and hereby ratifying and confirming all that my said attorney may do or cause to be done lawfully by virtue hereof.

In testimony whereof I have hereunto set my hand and seal this eleventh day of January, 1878.

LEWIS C. THATCHER. [SCROLL SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Charles D. Green, Jr., a commissioner for Colorado at St. Louis, Missouri, hereby certify that on this eleventh day of January, A. D. 1878, before me personally appeared Lewis C. Thatcher, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged that he executed the same for the purposes therein set forth.

In witness whereof I have hereto set my hand and official seal this eleventh day of January, A. D. 1878.

[OFFICIAL SEAL.] C. D. GREEN, JR.,
Commissioner for Colorado at St. Louis, Missouri.

243 STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office, as the same appears in Book 95, at page 566.

Witness my hand and official seal this 6th day of July, A. D. 1882.

[SEAL.] WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

EXHIBIT L. John W. Webster, Examiner.

Pendency of Suit.

Lewis C. Thatcher
to
Joseph Gottlieb.

Filed for record 4¾ o'clock p. m., February 18, 1879.
W. C. LOTHROP, *Recorder.*

In the Circuit Court of the United States for the District of Colorado, in the 8th Circuit.

JOSEPH GOTTLIEB
against
LEWIS C. THATCHER.

Notice is hereby given that the above action is pending in the circuit court of the United States for the district of Colorado, in the 8th circuit, between Joseph Gottlieb and Lewis C. Thatcher;
244 that there is affected thereby the following-described property, to wit, lot numbered twenty-seven (27), in block seventy-eight (78), and lot four (4), in block one hundred and sixty-five, in the east division of the city of Denver, and of the northeast quarter (¼) and the southwest quarter (¼) of section twenty-four (24), and the east half (½) of the southeast quarter (¼) of section twenty-six (26), in township one (1) south, and the southeast quarter of section twenty-four (24), in township three (3) south, all in range sixty-seven (67) west, all in the county of Arapahoe and the State of Colorado; that the object of said suit is to set aside a deed and a certificate of sale of said above-described property to said Lewis C. Thatcher.

JOSEPH GOTTLIEB.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from

the records of my office as the same appears in Book 100, at page 235.

Witness my hand and official seal this 6th day of July, A. D. 1882.

[SEAL.] WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

EXHIBIT M. John W. Webster, Examiner.

Sheriff's Deed.

Samuel H. Thatcher, by sheriff,
to
Lewis C. Thatcher.

Filed for record 1½ o'clock p. m., December 5th, 1878.
W. C. LOTHROP, *Recorder.*

245 Whereas Samuel Kaucher did at the April term A. D. 1874 of the district court of the first judicial district of the Territory of Colorado sitting within and for the county of Arapahoe recover a judgment against Samuel H. Thatcher for the sum of twenty-seven hundred and ten dollars and forty cents and costs of suit upon which judgment an execution was issued dated the twenty-ninth day of January A. D. 1878 directed to the sheriff of the county of Arapahoe to execute and by virtue of said execution the said sheriff levied upon the hands hereinafter described and the same were struck off and sold to Lewis C. Thatcher he being the highest and best bidder therefor and the time and place of sale thereof having been duly advertised according to law. Now therefore know all by this deed that I David J. Cook sheriff of the county of Arapahoe in the State (formerly Territory), of Colorado in consideration of the premises have granted, bargained and sold and do hereby convey to the said Lewis C. Thatcher his heirs and assigns the following-described tract or tracts of land situate in the county of Arapahoe and State of Colorado to wit: Lot numbered twenty-seven in block numbered seventy-eight and lot numbered four in block numbered one hundred and sixty-five in the east division of the city of Denver the northeast quarter of section twenty-four in township one south of range sixty-seven west the southwest quarter of section twenty-four in township one south of range sixty-seven west the east half of the southeast quarter of section twenty-six in township one south of range sixty-seven west, the southeast quarter of section twenty-four in township three south of range sixty-seven west and a certain tract or parcel of land described as follows, to wit: Commencing at the southeast corner of the northeast quarter of section twenty-five in township three south of range sixty-eight west running thence north ten chains thence west twenty chains thence south ten chains thence east twenty chains to the place of beginning containing twenty acres more or less, to have

and hold the said described premises with all the appurte-
246 nances thereunto belonging to the said Lewis C. Thatcher his heirs and assigns forever.

Witness my hand and seal this twenty-fifth day of November, A. D. 1878.

DAVID J. COOK. [WAFER SEAL.]
Sheriff of the County of Arapahoe Aforesaid.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Before the undersigned, a notary public within and for the county of Arapahoe aforesaid, personally appeared the above-named David J. Cook and acknowledged the execution of the foregoing instrument of writing as his voluntary official act and deed for the uses and purposes therein mentioned, and I do certify that the said David J. Cook is personally known to me as the sheriff of the county of Arapahoe.

Given under my hand and notarial seal, at Denver, in said county, this 25th day of November, A. D. 1878.

[NOTARIAL SEAL.] JOHN WALKER,
Notary Public.

STATE OF COLORADO, } ss.
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in Book 104, at page 245.

[SEAL.] Witness my hand and official seal this 31 day of August, A. D. 1882.

WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

247 COMPL'T'S EXHIBIT N. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Arapahoe, }

The People of the State of Colorado to the sheriff of Arapahoe county, Greeting:

We command you that of the lands and tenements, goods and chattels and chattels real, of Samuel H. Thatcher, defendant, in your county, you cause to be made the sum of two thousand seven hundred and ten dollars and forty cents, which Samuel Kaucher, plaintiff, lately in the district court of said Arapahoe county, at a term thereof begun and held at Denver, in said county, on the first Monday of April, A. D. 1874, recovered against the said defendant, and which by the said court was adjudged to the said plaintiff for his damages by him in this behalf sustained.

And also the further sum of twenty-eight dollars and five cents, which were adjudged to the said plaintiff for his costs and charges in that behalf expended, included in the annexed fee bill, whereof the said defendant was convict, as appears to us of record; and have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make a return of this writ, with an indorsement thereon in what manner you shall have expended the same, in ninety days from the date hereof.

Witness Archie C. Fisk, clerk of the said court, and the [SEAL.] seal thereof, at Denver, in said county, this 29th day of January, A. D. 1878.

ARCHIE C. FISK, *Clerk*,
By CHAS. W. TAYLOR,
Deputy Clerk.

Whole No. —; Journal 9, page 158; Fee Book 3, page 163.

248 STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court, April Term, A. D. 1874.

In the Matter of SAMUEL KAUCHER
versus
SAMUEL H. THATCHER. } Trover.

Plaintiff's Costs.

Clerk's fees:

Appr. att'ys, 25; ent. suit on docket, 1.05; bond for sum's, 1.25; Su-pœnas, 80	3 35
Dedimus, 2.00; tak'g and filing affi., 20; dedimus, —	2 20
Tak'g and appr. bond, —; filing papers on appeal, —; assess. dam., —; swear. jury, 25; swear. wit., 60	85
Swear. officer, 10; ent'g 5 orders, 3.00; filing 10 papers, 1.15	4 25
Dis., —; ent. final judg't, 25; ent. sat., —; ent., —; issuing ex., 1.00	1 25
Dock'g same, 10; ent. sheriff's return, 45; fee bill, 1.00; tax costs abs't jud., 50	2 05
	13 95
Jury fee	5 00
Witness fees	2 50
Sheriff's fees	6 60
	$28 05

I, Archie C. Fisk, clerk of the district court of said county of Arapahoe, do hereby certify that the above is a true copy from my fee book of plaintiff's costs.

Given under my hand and the seal of said court.

[SEAL.] ARCHIE C. FISK, *Clerk*,
By CHAS. W. TAYLOR,
Deputy Clerk.

and hold the said described premises with all the appurte-
246 nances thereunto belonging to the said Lewis C. Thatcher his heirs and assigns forever.

Witness my hand and seal this twenty-fifth day of November, A. D. 1878.

DAVID J. COOK, [WAFER SEAL.]
Sheriff of the County of Arapahoe Aforesaid.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Before the undersigned, a notary public within and for the county of Arapahoe aforesaid, personally appeared the above-named David J. Cook and acknowledged the execution of the foregoing instrument of writing as his voluntary official act and deed for the uses and purposes therein mentioned, and I do certify that the said David J. Cook is personally known to me as the sheriff of the county of Arapahoe.

Given under my hand and notarial seal, at Denver, in said county, this 25th day of November, A. D. 1878.

[NOTARIAL SEAL.] JOHN WALKER,
Notary Public.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in Book 104, at page 245.

[SEAL.] Witness my hand and official seal this 3d day of August, A. D. 1882.

WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

247 COMPL'T'S EXHIBIT N. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Arapahoe, }

The People of the State of Colorado to the sheriff of Arapahoe county, Greeting:

We command you that of the lands and tenements, goods and chattels and chattels real, of Samuel H. Thatcher, defendant, in your county, you cause to be made the sum of two thousand seven hundred and ten dollars and forty cents, which Samuel Kaucher, plaintiff, lately in the district court of said Arapahoe county, at a term thereof begun and held at Denver, in said county, on the first Monday of April, A. D. 1874, recovered against the said defendant, and which by the said court was adjudged to the said plaintiff for his damages by him in this behalf sustained.

And also the further sum of twenty-eight dollars and five cents, which were adjudged to the said plaintiff for his costs and charges in that behalf expended, included in the annexed fee bill, whereof the said defendant was convict, as appears to us of record; and have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make a return of this writ, with an indorsement thereon in what manner you shall have expended the same, in ninety days from the date hereof.

Witness Archie C. Fisk, clerk of the said court, and the [SEAL.] seal thereof, at Denver, in said county, this 29th day of January, A. D. 1878.

ARCHIE C. FISK, *Clerk*,
By CHAS. W. TAYLOR,
Deputy Clerk.

Whole No. —; Journal 9, page 158; Fee Book 3, page 163.

248 STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court, April Term, A. D. 1874.

In the Matter of SAMUEL KAUCHER
versus
SAMUEL H. THATCHER. } Trover.

Plaintiff's Costs.

Clerk's fees:

Appr. att'ys, 25; ent. suit on docket, 1.05; bond for sum's, 1.25; Su-pœnas, 80	3 35
Dedimus, 2.00; tak'g and filing affi., 20; dedimus, —	2 20
Tak'g and appr. bond, —; filing papers on appeal, —; assess. dam., —; swear. jury, 25; swear. wit., 60	85
Swear. officer, 10; ent'g 5 orders, 3.00; filing 10 papers, 1.15	4 25
Dis., —; ent. final judg't, 25; ent. sat., —; ent., —; issuing ex., 1.00	1 25
Dock'g same, 10; ent. sheriff's return, 45; fee bill, 1.00; tax costs abs't jud., 50	2 05
	13 95
Jury fee	5 00
Witness fees	2 50
Sheriff's fees	6 60
	$28 05

I, Archie C. Fisk, clerk of the district court of said county of Arapahoe, do hereby certify that the above is a true copy from my fee book of plaintiff's costs.

Given under my hand and the seal of said court.

[SEAL.] ARCHIE C. FISK, *Clerk*,
By CHAS. W. TAYLOR,
Deputy Clerk.

Rec. January 29th, A. D. 1878, at 12 o'clock m.

D. J. COOK, *Sheriff*,
By W. A. SMITH,
Under Sheriff.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

I have duly executed the within on this 29th day of January, A. D. 1878, by levying upon all the right, title, and interest of the within-named Samuel H. Thatcher in and to the following-described tracts or parcels of land in said county of Arapahoe situate,
249 to wit: Lot numbered twenty-seven, in block numbered seventy-eight, and lot number four, in block numbered one hundred and sixty-five, in the east division of the city of Denver, and the northeast quarter and the southwest quarter of section twenty-four, township one south, of range sixty-seven west, and the east half of the southeast quarter of section twenty-six, township one south, of range sixty-seven west, and the southeast quarter of section twenty-four, township three south, of range sixty-seven west; and also a certain tract or parcel of land described as follows, to wit: Commencing at the southeast corner of the northeast quarter of section twenty-five, township three south, of range sixty-eight west, running thence north ten chains, thence west twenty chains, thence south ten chains, thence east twenty chains to the place of beginning, containing twenty acres, more or less, together with all and singular the appurtenances thereunto belonging, which I duly advertised for sale for the space of twenty days, at which time I proceeded to sell and did sell the above property to Lewis C. Thatcher for the sum of three thousand nine hundred and fifty dollars, as more fully appears by the certificate of purchase, he being the highest and best bidder therefor. I have paid the plaintiff, as per receipt hereunto attached, the sum of three thousand seven hundred and thirty-six dollars and fifty-two cents. I have paid the clerk of the district court twenty-eight dollars and five cents. I have retained ninety-eight dollars and four cents as sheriff's costs. The balance I have paid to Samuel H. Thatcher, as per receipt hereunto attached. This writ, therefore, returned satisfied in full this 20th day of February, A. D. 1878.

D. J. COOK, *Sheriff*,
By W. A. SMITH,
Under Sheriff.

250 (Indorsed:) 2505. April term, A. D. 1874. Execution, *fi. fa.*, and fee bill. District court.

Fee Book 3, page 163.
Journal 9, page 158.
Whole No. —.

SAMUEL KAUCHER
vs.
SAMUEL H. THATCHER.

Debt	
Damages	$2,710 40
Costs	28 05
Total amount	$2,738 45

The sheriff will collect interest from May 7th, 1874.

A. C. FISK, *Clerk.*
—— ——, *Deputy.*

Sheriff's Fees.

Recording	$1 25
Levying execution	2 00
Advertising property	33 90
— miles travel	1 50
Commission on $—	55 14
Returning execution	25
Certificate of purchase	2 00
Recording	2 25
	98 30

Filed this 20th day of February, A. D. 1878.
A. C. FISK, *Clerk,*
By CHAS. W. TAYLOR, *Deputy.*

COMPL'T'S EXHIBIT O. John W. Webster, Examiner.

Attached to said execution and made a part of the sheriff's return thereof were the following papers, to wit:

DENVER, COL., *Feb'ry 20th,* 1878.

Received from W. A. Smith, under sheriff, the sum of eighty-seven and $\frac{23}{100}$ ($87.23) dollars, as per sale in case of Kaucher *vs.* Samuel H. Thatcher.

SAM. H. THATCHER.

251 Received of D. J. Cook, sheriff, the sum of three thousand seven hundred and thirty-six $\frac{52}{100}$ dollars, $3,736.52, in full satisfaction of the judgment of Samuel Kaucher *vs.* Samuel H. Thatcher, this 20th day of February, A. D. 1878.

OWEN E. LE FEVRE, FOR
JACOBSON AND LE FEVRE.
CHARLES AND PHELPS,
By CHARLES AND DILLON.

Sheriff's Sale.

By virtue of a certain writ of execution issued out of the district court of the second judicial district of Colorado, sitting within and for the county of Arapahoe, and to me, as sheriff, directed, in favor of Samuel Kaucher and against Samuel H. Thatcher, whereby I am commanded to make the sum of two thousand seven hundred and ten dollars and forty cents damages and the further sum of twenty-eight dollars and five cents costs of suit, I have levied upon all the right, title, and interest of the said Samuel H. Thatcher in and to the following-described tracts or parcels of land in said county of Arapahoe situate, to wit: Lot numbered twenty-seven (27), in block numbered seventy-eight (78), and lot numbered four (4), in block numbered one hundred and sixty-five (165), in the east division of the city of Denver, and the northeast quarter and the southwest quarter of section twenty-four (24), township one (1) south, of range sixty-seven (67) west, and the east half of the southeast quarter of section twenty-six (26), township one (1) south, of range sixty-seven (67) west, and the southeast quarter of section twenty-four (24), township three (3) south, of range sixty-seven (67) west, and also a certain tract or parcel of land described as follows, to wit: Commencing at the southeast corner of the northeast quarter of section twenty-five (25), township three (3) south, of range sixty-
252 eight (68) west, running thence north ten (10) chains, thence west twenty (20) chains, thence south ten (10) chains, thence east twenty (20) chains to the place of beginning, containing twenty (20) acres, more or less, together with all and singular the appurtenances thereunto belonging, which or so much thereof as may be necessary to pay the above-mentioned sums of damages and costs, together with accrued and accruing interests and costs, I will expose and sell at public auction to the highest and best bidder, for cash, at the east front door leading to the court-house of said county, in the city of Denver, on the 20th day of February, A. D. 1878, at ten o'clock in the forenoon of said day.

DAVID J. COOK,
Sheriff of Arapahoe County Aforesaid.

Dated January 30, 1878.

COMPL'T'S EXHIBIT P. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Herman Beckurts, of said county of Arapahoe, do hereby certify that I am the publisher and proprietor of the Denver Tribune, a daily newspaper printed and published in Denver, in said county and State, and I further certify that the notice, of which the annexed is a true copy, has been published in said newspaper for twenty (20) successive times, and that the first publication of said notice was in said paper bearing date the 30th day of January, A. D. 1878, and

the last publication of said notice was in said paper bearing date the 20th day of February, A. D. 1878.

In witness whereof I have hereunto set my hand this 20th day of February, A. D. 1878.

HERMAN BECKURTS.

253 And afterwards and on, to wit, the 29th day of January, A. D. 1878, came said plaintiff and filed herein a remit-itur from the supreme court.

And said remittitur is in words and figures as follows, to wit:

In the Supreme Court of the State of Colorado, December Term, A. D. 1877.

SAMUEL H. THATCHER, Appellant, *vs.* SAMUEL KAUCHER, Appellee. } 174. Appeal from District Court of Arapahoe County.

254 EXHIBIT 1, FOR IDENTIFICATION. J. W. Webster, Examiner.

DENVER, COL., *Feb'y 20th*, 1878.

Received from Lewis C. Thatcher the sum of three thousand nine hundred and fifty dollars ($3,950.00) in purchase of *of* certain property sold on execution as the property of Samuel H. Thatcher, in the case of Samuel Kaucher *vs.* Samuel H. Thatcher.

D. J. COOK, *Sheriff*,
By W. A. SMITH,
Under Sheriff.

EXHIBIT 2, FOR IDENTIFICATION. J. W. Webster, Examiner.

DEN., COL., *Feb'y* 13, '79.

L. C. Thatcher, Esq.

DEAR SIR: Would like to see you at 8.30 a. m. on business of importance.

Yours truly,

J. GOTTLIEB,
372 *Blake St.*

EXHIBIT 3. J. W. Webster, Examiner.

$2,000. On or before the thirteenth day of November, A. D. 1879, for value received, I promise to pay to the order of Samuel H. Thatcher two thousand dollars, with interest at the rate of ten per cent. per annum from date until paid.

Denver, Colorado, November 13, 1876.

L. C. THATCHER.

[Written across the face in red ink:] Paid.

255 (Indorsed:) Sam. H. Thatcher.

EXHIBIT 4. J. W. Webster, Examiner.

Jno. Cook, Jr., & Co., bankers and real-estate agents, 376 Lawrence St.

DENVER, COLORADO, *July* 17, 1877.

L. C. Thatcher, Esq., St. Louis, Mo.

DEAR SIR: Yours of July 16th rec'd. In yours of July 11th you only asked for the balance and not for any statement, which you herewith find enclosed.

Yours re.,

J. COOK, JR., & CO.,
476 *Arapahoe St.*

	DRS.		CRS.	
1876.				
Nov. 15th.	Com.	50	Rent to Dec. 15th	10
Dec. 19.	"	50	" " July 15	10
Jan'y 17.	"	50	1877.	
Feb. 17.	"	50	Jan'y 17. " " Feb. 15	10
M'ch 14.	Costs in putting tenant out	10	Feb. 17. " " only part	5
M'ch 28.	Repairing fence blown down	1 35	Vacated by force.	
" 16.	Com. re-renting	5	M'ch 16. Rent to April 20	10
" "	Clearing house & yard as per agreement with tenant	5 65	April 23. " " May 20	10
April 23.	Com.	50	May 23. " " June 20	10
May 23.	"	50		
		25 00		65
			Balance	$40

DEF'T'S EXHIBIT 5. John W. Webster, Examiner.

District Court, Arapahoe County.

TERRITORY OF COLORADO, *County of Arapahoe,* } *ss:*

256 Pleas in the district court of the first judicial district of Colorado Territory, sitting in and for the county of Arapahoe, before the Honorable Ebenezer T. Wells, associate justice of the supreme court of said Territory assigned to said judicial district, at a term thereof begun and held at the court-house, in Denver, in said county, on the first Monday (it being the sixth day) of April, A. D. one thousand eight hundred and seventy-four.

Present: Honorable Ebenezer T. Wells, judge of said court; Merrick A. Rogers, Esq., district attorney of said judicial district; Edmund A. Willoughby, Esq., sheriff of said county; George H. Mills, clerk of said court.

SAMUEL KAUCHER *vs.* SAMUEL H. THATCHER. } 2505.

Be it remembered that heretofore and on, to wit, the 7th day of May, A. D. 1874, the same being one of the regular juridical days of the April term, A. D. 1874, of said court, the following proceedings *inter alia* were had and entered of record in said cause, to wit:

SAMUEL KAUCHER
vs.
SAMUEL H. THATCHER. } 2505. Trover.

At this day comes the said plaintiff, by J. Q. Charles, Esq., and A. C. Phelps, Esq., his attorneys, and the said defendant, by H. R. Hunt, Esq., his attorney, also comes.

Whereupon — is considered by the court that the said plaintiff have and recover of and from the said defendant the sum of two thousand seven hundred and ten dollars and forty cents ($2,710.40), his
257 damages aforesaid in form aforesaid assessed, and his costs by him in this behalf laid out and expended, taxed at 25.30 dollars, and have execution therefor; and the motion of the defendant for a new trial coming on to be heard, and the court being sufficiently advised in the premises—

It is ordered by the court that said motion be denied. Whereupon the defendant prays an appeal from the judgement aforesaid of this court to the supreme court of this said Territory, which is by the court allowed on condition that defendant within ten (10) days hence file with the clerk of this court his bond in such appeal in the penalty of three thousand five hundred dollars ($3,500), with good and sufficient securities, to be approved by the clerk of this court and conditioned according to law.

It is also ordered by the court that the said defendant be allowed ninety (90) days from this day to tender to the judge of this court his bill of exceptions herein, and that the same when allowed and signed by the judge of this court be filed as of this day.

DEF'T'S EXHIBIT 6. John W. Webster, Examiner.

And afterwards and on, to wit, the 13th day of May, A. D. 1874, came said defendant and filed herein his bond in appeal.

And said bond is in words and figures as follows, to wit:

Know all men by these presents that we, Samuel H. Thatcher, as principal, and Robert R. McCormick, J. E. Bates, as surety, are held and firmly bound unto Samuel Kaucher in the penal sum of thirty-five hundred dollars; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally and firmly, by these presents. Witness our hands and seals this 13th day of May, A. D. 1874.

The condition of the above obligation is such that whereas the above-named Samuel Kaucher did, on the seventh day of May, A. D. 1874, in the district court of the first judicial district of
258 Colorado Territory, within and for the county of Arapahoe, at the April term, A. D. 1874, thereof, recover a judgment against the above-bounden Samuel H. Thatcher for the sum of twenty-seven hundred and ten dollars and forty cents and costs of suit, from which said judgment the said Samuel H. Thatcher has prayed an appeal to the supreme court of said Colorado Territory, according to law: Now, if the said Samuel H. Thatcher shall prose-

cute his said appeal with effect and without delay and shall well and truly pay or cause to be paid the said judgment, costs, interests, and damages in case the said judgment shall be affirmed by said supreme court, then this obligation to be null and void; otherwise be and remain in full force and effect.

SAMUEL H. THATCHER. [SEAL.]
ROBERT R. McCORMICK. [SEAL.]
J. E. BATES. [SEAL.]

E. L. Smith identifies these signatures.

[Endorsed:] 2505. Samuel Kaucher *vs.* Samuel H. Thatcher. Appeal bond. Approved and filed May 13th, 1874. Edward F. Bishop, clerk.

And afterwards and on, to wit, the 29th day of January, A. D. 1878, an execution issued out of the clerk's office directed to the sheriff of Arapahoe county.

And said execution is in words and figures as follows, to wit:

259 DEF'T'S EXHIBIT 7. John W. Webster, Examiner.

At this day comes said appellee, by J. Q. Charles, Esquire, his attorney, and suggests to the court here that the judgment of the supreme court of the late Territory of Colorado herein hath by the Supreme Court of the United States been affirmed with costs, as appears by the mandate of said court now filed herein, whereby we are commanded to give execution of the said judgment as the law directs. Wherefore all and singular the premises being seen and by the court here fully understood, it is ordered by the court that the judgment of the district court in and for Arapahoe county, in the late Territory of Colorado, in this cause heretofore rendered, be in all respects affirmed and stand in full force and effect, and it is now here ordered and adjudged in conformity to the mandate aforesaid that said appellee, Samuel Kaucher, recover of and from the said appellant, Samuel Thatcher, his costs in this behalf in this court expended, to be taxed, and have execution therefor; and let this cause be remanded to the said district court in and for the county of Arapahoe.

I, Keyes Danforth, clerk of the supreme court of the State of Colorado, do hereby certify that the foregoing is a true copy of [SEAL.] an original judgment entered in the above-entitled cause on the 28th day of January, A. D. 1878, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at my office, in the city of Denver, this 29th day of January, A. D. 1878.

KEYES DANFORTH, *Clerk.*

(Endorsed:) 2505. No. 174. In the supreme court, State of Colorado. Remittitur. Thatcher *vs.* Kaucher. Filed January 29, 1878. Archie C. Fisk, clerk, by Chas. W. Taylor, deputy clerk.

260 STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Henry Sparnick, clerk of the district court of the State of Colorado, sitting in and for the county of Arapahoe, do hereby certify the above and foregoing to be a true, complete, and perfect transcript and copy of (1) appeal bond, (2) execution, (3) remittitur, and the order of judgment had and entered of record in a certain cause in said court lately depending, wherein Samuel Kaucher was plaintiff and Samuel H. Thatcher was defendant as the same now remain on file and of record in this office.

Witness my hand and the seal of said court, at the court-
[SEAL.] house, in Denver, county and State aforesaid, this 22nd day of August, A. D. 1882.

HENRY SPARNICK, *Clerk.*

DEF'T'S EXHIBIT 8. John W. Webster, Examiner.

UNITED STATES OF AMERICA.

In County Court, January Term, A. D. 1879.

STATE OF COLORADO, } ss:
Arapahoe County, }

Pleas before the Honorable Benj. F. Harrington, judge of the county court within and for the county of Arapahoe, State aforesaid, and at a term thereof begun and held at the court-house, in the city of Denver, in said county, on the first Monday (being the — day) of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

Present: Honorable Amos Steck, judge; D. J. Cook, sheriff.

Attest: O. A. HATTEN, *Clerk.*

261 Be it remembered that on, to wit, the 26th day of February, A. D. 1879, the same being one of the regular days of the January term of said court in said year, comes the appraisers of the estate of Samuel H. Thatcher, dec'd, and file herein their bill of appraisement; which said bill is in words and figures following, to wit:

Warrant to Appraisers.

Estate of Samuel H. Thatcher, deceased.

STATE OF COLORADO, } ss:
Arapahoe County, }

County Court, in Probate, —— Term, A. D. 18—.

The people of the State of Colorado to R. E. Whitsitt, Richard Sopris, and Charles F. Wilson, of the county of Arapahoe and State of Colorado, Greeting:

This is to authorize you, jointly, to appraise the goods, chattels,

and personal estate of Samuel H. Thatcher, late of the county of Arapahoe and State of Colorado, deceased, so far as the same shall come to your sight and knowledge, each of you having first taken the oath hereunto annexed, a certificate whereof you are to return annexed to an appraisement bill of said goods, chattels, and personal estate by you appraised in dollars and cents, and in the said bill of appraisement you are to set down in a column or columns opposite to each article appraised the value thereof.

Witness Amos Steck, judge of the county court of Arapahoe county, and the seal of said court this 26 day of February, 1879.

AMOS STECK, *Judge.*

Oath of Appraisers.

262 We and each of us do solemnly swear that we will well and truly, without partiality or prejudice, value and appraise goods, chattels, and personal estate of Samuel H. Thatcher, deceased, so far as the same shall come to our sight and knowledge, and that we will in all respects perform our duties as appraisers to the best of our skill and judgment.

RICHARD SOPRIS.
CHARLES F. WILSON.
R. E. WHITSITT.

Subscribed and sworn to this 26th day of February, A. D. 1879, before me—

AMOS STECK, *Judge.*

Appraisement Bill.

Estate of Samuel H. Thatcher, Deceased.

STATE OF COLORADO, }
Arapahoe County. }

In County Court, in Probate, —— Term, 18—.

An appraisement bill of the goods, chattels, and personal estate of Samuel H. Thatcher, late of said county, deceased, made by virtue of the annexed warrant.

Articles.	Value. *Dollars.*	*Cents.*
83 wooden chairs, at 50c.	41	50
2 tables (10 ft. long), at 2.00	5	00
3 tables (8 ft. long), at 2	6	00
2 tables (short), " 2	4	00
2 tables (round), " 2	4	00
1 extension dining table	10	00
1 high stool		50
13 spittoons, at 25c.	3	25
1 coal box		50
1 heating stove	10	00

Articles.	Value. Dollars.	Cents.
1 cooking stove & fixtures	15	00
1 dining-room safe	3	00
2 ice boxes	10	00
1 sideboard	5	00
2 gas burners (2 lights each)	1	00
1 gas burner (3-light)	1	00
4 " " (1 light each), 50c.	2	00
1 bar counter & bar fixtures	25	00
1 faro table 2 faro racks of checks in wooden chest 1 keno globe—peg board 2 racks 263 2 faro lay-outs 2 setts of keno cards 100 duplicate cards for keno	50	00
1 bedstead & bedding	10	00
2 cane-bottom chairs, at 25		50
1 table	2	50
1 heating stove	7	00
3 pictures		50
1 looking-glass		50
1 wardrobe	4	00
2 setts of window curtains	1	00
1 carpet	10	00
1 wash bowl & pitcher		50
1 iron safe	50	00
1 gold watch & chain	70	00
1 diamond pin	30	00
1 diamond ring	40	00
	421	*25*
Total	421	25

We, the undersigned, appointed by the honorable county court of said county to appraise the goods, chattels, and personal estate of Samuel H. Thatcher, late of said county, deceased, do hereby certify that the foregoing is a true and correct appraisement bill of said goods, chattels, and personal estate so far as the same have come to our sight and knowledge; that we have appraised each article at its true value, according to the best of our skill and judgment, having first taken the oath required by law and hereunto annexed.

Given under our hands and seals this twenty-sixth day of February, A. D. 1879.

RICHARD SOPRIS. [SEAL.]
CHARLES F. WILSON. [SEAL.]
RICHARD E. WHITSITT. [SEAL.]
Appraisers.

We, the appraisers above named, do certify that we have attended and served one day each in appraising the estate of said deceased.

RICHARD SOPRIS,
CHARLES F. WILSON,
RICHARD E. WHITSITT,
Appraisers.

264 [Endorsed:] Appraisement bill. Arapahoe county court. Estate of Samuel H. Thatcher, deceased. Filed this 26th day of Feb'y, 1879. Amos Steck, judge. Approved July 26, 1879. Amos Steck, judge. Recorded in Inventory Record A, page 36. Amos Steck, judge.

DEF'T'S EXHIBIT 9. John W. Webster, Examiner.

And afterwards, on, to wit, the 15th day of October, A. D. 1879, comes Joseph Gottlieb and files herein his claim against estate; which said claim is in the words and figures following, to wit:

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

Joseph Gottlieb, being duly sworn, on oath deposes and says that the annexed claim against the estate of Samuel H. Thatcher, deceased, is just, correct, and true, and the sum of five hundred and seventy-seven dollars and ninety-five cents is still due affiant and unpaid on said claim after allowing all just credits.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 15th day of October, A. D. 1879.

——— ———.

Estate of Samuel H. Thatcher, deceased, to Joseph Gottlieb, Dr.

July 23, '77.	To judgment in the dist. court in & for Arapahoe county, Colorado, in favor of said Gottlieb & *vs.* said Thatcher, a transcript of which judgment is hereto attached, marked "Ex. A"----	$2,171 00
	To costs of said suit----------	60 20
	Total----------	$2,231 20
	To int. on $2,170 from July 23, '77, to Aug. 17, 1877, @ 10 %----------	14 40
	Total----------	$2,245 60
265	By paid Aug. 17, '77, on execution----------	1,694 10
		$551 50

To int. on $550.50 from Aug. 17, '77, to Dec. 4, 1877, at 10%	$16 00
	$567 50
By paid Dec. 4, 1877	80 00
	$487 50
To int. on $486.50 from Dec. 4, '77, to Oct 15, 1879, at 10%	90 45
Balance due Oct. 15, 1879	$577 95

Transcript of Judgement Docket, District Court.

No.	Judgement debtors.	Judgement creditors.	Judgement.	Time of entry.	Where entered in judgement book.
44	Samuel H. Thatcher...	Joseph Gottlieb..... ...	2,171 00 60 20	July 23, 1877.	No. 12, page 110.

Judgement of appellate court.	Satisfaction of judgment when en'd.	Remarks.
July 24th, 1877.....	Execution issued.	
Aug. 17th, 1777.....	Execution returned.	
	Satisfaction as to $1,694.10.	
	Alias ex. Sept. 4, 1877.	
Dec. 4, 1877	Alias ex. returned, satisfaction as to $80.	

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

In the District Court of the 2nd Judicial District within and for the County of Arapahoe Aforesaid, at the April Term, A. D. 1877.

JOSEPH GOTTLIEB, Plaintiff, }
vs.
SAMUEL H. THATCHER, Defendant. }

I, Archie C. Fisk, — of said court, do hereby certify that the above is a full, true, and correct transcript of the entries in the above-entitled action as the same appears in the judgment docket kept at my office.

In witness whereof I have hereunto set my hand and the seal of said court, at Denver, this 14th day of October, A. D. 1879.

[SEAL.] ARCHIE C. FISK, *Clerk.*

(Endorsed:) Jos. Gottlieb *vs.* Estate of Sam'l H. Thatcher, deceased. Allowed at 575.00 dol's this 11 March, 1880. 4 class. Amos Steck, judge. Filed Oct. 15, '79. O. A. Hatten, clerk.

266 DEF'T'S EXHIBIT 10. John W. Webster, Examiner.

And afterwards, on, to wit, the 4th day of March, A. D. 1879, comes Joseph Gottlieb and files herein his affidavit, &c.; which said affidavit is in the words and figures following, to wit:

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the County Court.

In the Matter of the Estate of SAMUEL H. THATCHER, Deceased.

Joseph Gottlieb, of lawful age, states on oath that he is a creditor of Samuel H. Thatcher, deceased, and interested in the estate of said Samuel H. Thatcher; that he is informed and believes that one W. S. Baker has in his possession or has concealed two bags of Mexican dollars and other goods and chattels and moneys and effects belonging to the said estate; that he is informed and believes that one Kate Fulton has in her possession one iron safe and other goods and chattels belonging to said estate; that he is informed and believes that one O. E. Lefever has in his possession and under his control certain papers and evidences of indebtedness belonging to said estate, and evidences of title to which said estate is entitled, and that he believes one Philip Trounstine has property, goods, and chattels and evidences of indebtedness belonging to said estate, and prays the said court or the judge thereof to cite said W. S. Baker, Philip Trounstine, O. E. Lefever, and Kate Fulton before said court at an early day that they and each of them may be examined under oath touching the same.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 4th day of March, A. D. 1879.

O. A. HATTEN, *Clerk.*

267 (Endorsed:) In the matter of estate of Sam'l H. Thatcher, dec'd. Affidavit of citation of parties to answer touching property, &c. Filed M'ch 4, '79. O. A. Hatten, clerk.

DEF'T'S EXHIBIT 11. John W. Webster, Examiner.

And afterwards, on, to wit, the 20th day of March, A. D. 1879, comes Joseph Gottlieb and files herein his affidavit; which said affidavit is in the words and figures following, to wit:

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the County Court.

In the Matter of Estate of SAMUEL H. THATCHER, Deceased.

Joseph Gottlieb, of lawful age, being first duly sworn, states on oath that he is a creditor of said estate of Samuel H. Thatcher, deceased; that he believes that W. S. Bakre has in his possession concealed and has embezzled moneys and effects, goods and chattels, belonging to said estate, to wit, one sack of Mexican dollars, one sack of gold coin, and a large amount of United States currency and national bank bills, the exact amount and value of which is not

known to this affiant; that affiant, since the said W. S. Baker was heretofore cited to appear in this matter by this court, has learned facts relative to the matters above set forth, and now prays the court or judge thereof to cite the said W. S. Baker to appear before this court at an early hour of this day to be examined on oath touching the same.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 20th day of M'ch, 1879.
——— ———.

(Endorsed:) In the matter of estate of Sam'l H. Thatcher, deceased. Filed March 20th, 1879. A. Steck, judge. J. W. Horner, att'y.

268 And afterwards, on, to wit, the 16th day of May, A. D. 1881, comes Joseph Gottlieb and files herein his receipt; which said receipt is in the words and figures following, to wit:

Received from Chas. B. Patterson, administrator of the estate of Sam'l H. Thatcher, dec'd, the sum of twenty-four $\frac{75}{100}$ dollars, being the allowance made by the county court in the final distribution of said estate upon a claim filed there by me.

Denver, Col., May 12, 1881.

J. GOTTLIEB.

(Endorsed:) No. 1. Filed May 16, 1881. R. W. Steele, clerk.

Fees, $2.75, p'd by H. C. Dillon, def't's att'y.

I, R. W. Steele, clerk of the county court of Arapahoe county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the appraisement bill, claim of Joseph Gottlieb, affidavits, and receipt in the estate of Sam'l H. Thatcher, deceased.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Denver, this 22nd day of August, A. D. 1882.

[SEAL.]

R. W. STEELE, *Clerk*,
By K. P. MACE, *Deputy*.

(Endorsed:) Transcript of proceedings. County court, Arapahoe county. In the matter of the estate of Sam'l H. Thatcher, dec'd.

District Court, Arapahoe County.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Pleas in the district court of the second judicial district of the State of Colorado, sitting in and for the county of Arapahoe, before the Honorable Victor A. Elliott, judge of said judicial district,
269 at a term thereof begun and held at the court-house, in Denver, in said county, on the third Tuesday (it being the seventeenth day) of April, A. D. one thousand eight hundred and seventy-seven.

Present: The Honorable Victor A. Elliott, judge of the district court of the second judicial district of the State of Colorado; David B. Graham, Esquire, district attorney of said district; David J. Cook, Esquire, sheriff of said county, and Robert Chalfant, clerk of said court.

EXHIBIT 12. R. H. B. 9, 12, '82.

JOSEPH GOTTLIEB
vs.
SAMUEL H. THATCHER. } 3544. Attachment.

Be it remembered that heretofore and on, to wit, the 21st day of July, A. D. 1877, came said plaintiff and filed herein as part of his evidence in the above cause a certain note; which is in words and figures as follows, to wit:

DEF'T'S EXHIBIT 12. John W. Webster, Examiner.

$2,700.00. 1875.

On or before one year after date, for value received, we, or either of us, promise to pay to Joseph Gottlieb or order two thousand and seven hundred dollars, at Joseph Gottlieb's store (Denver), with interest at the rate of five per cent. per month from date until paid; interest due and payable monthly.

ZELLA GLENMORE.
SAM. H. THATCHER.

No. —. Due —— —, 18—.

270 Endorsed: 3544. Received on within note from D. H. Moffat, trustee, from sale of land in Douglas county, three hundred dollars less taxes. Filed July 21st, 1877. Rob't Chalfant, clerk, by Chas. W. Taylor, deputy.

And afterwards and on, to wit, the 24th day of July, A. D. 1877, came said plaintiff and filed herein his præcipe for special execution.

And said præcipe is in words and figures as follows, to wit:

DEF'T'S EXHIBIT 13. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court within and for Arapahoe County.

JOSEPH GOTTLIEB, Plaintiff,
vs.
SAMUEL H. THATCHER, Defendant. } In Attachment.

The clerk will issue a special execution in the above cause directed to the sheriff of Arapahoe county.

BROWNE AND PUTNAM,
Plaintiff's Attorneys.

To R. Chalfant, Esq., clerk, July 24, 1877.

(Endorsed:) 3544. Præcipe for special execution. Arapahoe county district court, April term, 1877. Gottlieb *versus* Thatcher. Filed this 24th day of July, A. D. 1877. Rob't Chalfant, clerk, by Chas. W. Taylor, deputy clerk. Browne and Putnam, plaintiff's attorneys.

271 And afterwards and on, to wit, the 4th day of September, A. D. 1877, execution issued out of the clerk's office directed to the sheriff of Arapahoe county.

And said execution is in words and figures as follows, to wit:

DEF'T'S EXHIBIT 14. John W. Webster, Examiner.

STATE OF COLORADO, } ss:
County of Arapahoe, }

The People of the State of Colorado to the sheriff of Arapahoe county, Greeting:

We command you as we have heretofore commanded you that of the lands and tenements, goods and chattels, and chattels real of Samuel H. Thatcher, defendant, in your county, you cause to be made the sum of two thousand one hundred and seventy-one dollars and — cents, which Joseph Gottlieb, plaintiff, lately in the district court of said Arapahoe county, at a term thereof begun and held at Denver, in said county, on the third Tuesday of April, A. D. 1877, recovered against the said defendant and which by the said court was adjudged to the said plaintiff for his damages by him in this behalf sustained.

And also the further sum of one hundred and four dollars and sixty-five cents which were adjudged to the said plaintiff for his costs and charges in that behalf expended, included in the annexed fee bill whereof the said defendant was convict as appears to us of record; and have you these moneys ready to render to the said

plaintiff for his damages and costs aforesaid and make a return of this writ, with an indorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

272 Witness Robert Chalfant, clerk of the said court, and the seal thereof, at Denver, in said county, this 4th day of September, A. D. 1877.

[SEAL.] ROBERT CHALFANT, *Clerk*,
By CHAS. W. TAYLOR, *Deputy Clerk*.

Whole No. —; Journal 12, page —; Fee Book 4, page 120.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

In the District Court, April Term, A. D. 1877.

In the Matter of JOSEPH GOTTLIEB }
versus
SAM. H. THATCHER. }

Plaintiff's Costs.

Clerk's fees:

Appr. att'ys, 60; ent. suit on docket, 70; bond for costs, —; issuing 3 writs all. & 9 cop's, 7.50; sum's, —; subpœnas, 1.20	10 00
Dedimus, —; tak'g and filing 2 affi., 40; dedimus, 1.00	1 40
Tak'g and appr. bond, 1.00; filing papers on appeal, —; assess. dam., —; swear. 2 jury, 50; swear wit., 40	1 90
Swear. officers, 40; ent'g 9 orders, 4.50; filing 23 papers, 2.30	7 20
Dis., —; ent. final judg't, 25; ent. sat., 25; ent. —; issuing ex., 2.00	2 50
Dock'g, 7; filing same, 40; ent. sheriff's return, 90; fee bill, 1.00	2 30
Tax costs, —; recording bond, 1.00; ack'm't, 50	1 50
	26 80
Jury fees, 2 juries, April term, 1877	10 00
Witness fees	
Commissioner's fees	10 00
Sheriff's fees	57 85
	$104 65

I, Rob't Chalfant, clerk of the district court of said county of Arapahoe, do hereby certify that the above is a true copy from my fee book of plaintiff's costs.

Given under my hand and the seal of said court.

[SEAL.] ROBERT CHALFANT, *Clerk*,
By CHARLES W. TAYLOR,
Deputy Clerk.

To the sheriff of Arapahoe county:

The sum of $1,796.55 has been collected on the within judgment and should be credited thereon.

ROBT CHALFANT, *Clerk*,
By CHAS. W. TAYLOR, *Deputy*.

273 STATE OF COLORADO, } ss:
County of Arapahoe, }

Executed the within this 7th day of September, A. D. 1877, by levying upon and taking into my possession, as the property of the said Samuel H. Thatcher, a certain promissory note in favor of said Samuel H. Thatcher and signed by Anna C. McCormick for the sum of $1,350, when, on the 19th day of September, 1877, I proceeded to sell and did sell said note to Joseph Gottlieb for the sum of eighty dollars, he being the highest and best bidder therefor, and the said Joseph Gottlieb, being the plaintiff in this writ, retained the property and paid the costs. This execution satisfied only as to eighty dollars.

D. J. COOK, *Sheriff*,
By W. A. SMITH,
Under Sheriff.

(Endorsed:) 3544. April term, A. D. 1877. Execution, *fi. fa.*, and fee bill. District court. Book 4, page 120; Journal 12, page 110. Joseph Gottlieb *vs.* Sam. H. Thatcher.

Debt	$
Damages	2,171 00
Costs	104 65
Total amount	$2,275 60

The sheriff will collect interest from July 3rd, 1877.

ROB'T CHALFANT, *Clerk*.

Sheriff's Fees.

Levying execution	$2 00
Advertising property	11 00
— miles travel	1 50
Commission on $—	2 40
Returning execution	25
Certificate of purchase	2 00
	$19 15

Filed this 4th day of December, A. D. 1877.

ROBERT CHALFANT, *Clerk*,
By CHAS. W. TAYLOR,
Deputy Clerk.

BLAKE AND JACOBSON.

Rec'd Sept. 3rd, 1877, at the hour of 2 o'clock p. m.

D. J. COOK.

274 DEF'T'S EXHIBIT 15. John W. Webster, Examiner.

And afterwards and on, to wit, the 13th day of December, A. D. 1877, came said plaintiff, by S. E. Browne, Esq., his attorney, and filed herein an order for dismissal as to the garnishee.

And said order of dismissal is in words and figures as follows, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

In the District Court.

JOSEPH GOTTLIEB } Garnishment. J. Cook, Jr., Garnishee.
vs.
SAMUEL H. THATCHER. }

The claim against J. Cook, Jr., having been paid in full, the proceeding against him may be dismissed and the said garnishee discharged and conditional judgment against him discharg-.

December 13, 1877.

BROWNE AND PUTNAM,
Plaintiff's Attorneys.

(Endorsed:) 3544. Gottlieb *vs.* Thatcher. Dismissal as to Cook, garnishee. Filed December 13th, 1877. Rob't Chalfant, clerk, by Chas. W. Taylor, deputy.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Henry Sparnick, clerk of the district court of the State of Colorado, sitting in and for the county of Arapahoe, do hereby certify the above and foregoing to be a true, complete, and perfect transcript and copy of (1) promissory note, (2) præcipe for execution, (3) execution, and (4) order of dismissal as to garnishee had and entered of record in a certain cause in said court lately de-
274½ pending and the same being part of the files heretofore produced in evidence herein as the same now remain on file in this office.

Witness my hand and the seal of said court, at the court-
[SEAL.] house, in Denver, county and State aforesaid, this 22nd day of August, A. D. 1882.

HENRY SPARNICK, *Clerk.*

DEF'T'S EXHIBIT 16. John W. Webster, Examiner.

Deed of Trust.

A. C. & I. L. McCormick
to
David H. Moffat, Jr., for the Use of Samuel H. Thatcher.

Filed for record at 4 o'clock p. m., January 3, 1874.
W. D. ANTHONY, *Recorder.*

This indenture, made this first day of January in the year of our Lord, one thousand eight hundred and seventy-four, between Isaac L. McCormick and Anna C. McCormick of the county of Arapahoe, and Territory of Colorado, party of the first part, and David H. Moffat party of the second part, witnesseth:

That, whereas, Anna C. McCormick has executed her promissory note, bearing even date herewith, payable to the order of Samuel H. Thatcher two years after the date thereof, for the full sum of thirteen hundred and fifty dollars, with interest thereon at twenty per cent. per annum from date until paid.

And, whereas, the said Anna C. McCormick desirous of securing not only the prompt payment of said promissory note but also of effectually securing and indemnifying the said Samuel H. Thatcher for or on account of any assignment, endorsement or guarantee of said promissory note:—

Now therefore, the said party of the first part, in consideration of the premises, and for the purpose aforesaid, and in further consideration of one dollar to her in hand paid by the said party of the second part, the receipt whereof is hereby confessed, has and hereby does grant, bargain, sell and convey unto the said party of the second part, his heirs, assigns and successors, in trust, forever, all the premises situate in the county of Arapahoe, and
275 Territory of Colorado, known and described as follows, to wit: Commencing at the southeast corner of the northeast quarter (¼) of section twenty-five (25) township three (3) range sixty-eight (68) west. Thence north ten (10) chains. Thence west twenty (20) chains. Thence south ten (10) chains. Thence east twenty (20) chains to the place of beginning. Containing twenty acres be the same more or less.

To have and to hold the same, together with all and singular, the privileges and appurtenances thereunto belonging, in trust, nevertheless, that in case of default of payment of said note or any part thereof, or interest thereon, according to the tenor and effect of said note, then it shall and may be lawful for said party of the second part, his heirs, assigns or successors in trust, to sell and dispose of the said premises, and all the right, title, benefit and equity of redemption of said party of the first part her heirs or assigns, therein, at public auction, at the front door of the court-house, in the city of Denver, in the Territory of Colorado, for the highest and

best price the same will bring in cash, twenty days' public notice having been previously given of the time of such sale, by advertisement in one of the newspapers at that time published in said city of Denver and to make, execute and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale, and the purchase-money paid thereon, after first paying all costs of advertising and sale, commissions, and all other expenses of this trust, including all moneys advanced for taxes or other liens and assessments, with the interest thereon, to pay the principal and interest due on said note, according to the tenor and effect
276 thereof, rendering the overplus (if any) unto the said party of the first part, her legal representatives or assigns, on reasonable request: and it shall not be obligatory upon the purchaser or purchasers at any such sale, to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar both in law and equity, against the said party of the first part, her heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them: The holder or holders of said note or notes may become the purchaser of said property or any part thereof: said party of the first part to pay all costs of this trust, including all moneys advanced for taxes and other liens and assessments, with interest thereon at ten per cent. per annum.

And the said Isaac L. McCormick in consideration of one dollar to him in hand paid & Anna C. McCormick for themselves their heirs, executors, and administrators, covenant and agree to and with said party of the second part, his legal representatives or successors in trust, that at the time of the ensealing and delivery of these presents she is well seized of said premises in fee simple, and ha- good right, full power and lawful authority to grant, bargain and sell the same in manner and form as aforesaid, hereby fully and absolutely waiving and releasing all rights and claims he may have in or to said before-described premises as a homestead exemption, under and by virtue of any act of the General Assembly of the Territory of Colorado now existing, or which may hereafter be passed in relation thereto, and that the same are free and clear of all liens and encumbrances whatever, (except as hereinafter specified) and that they will pay all taxes or assessments levied or assessed against said premises up to the time the said notes shall become due and payable, or shall have been paid in full.

277 And it is stipulated and agreed, that in case of default in any of said payments of principal or interest as aforesaid, or of a breach of any of the covenants or agreements herein, then and in that case the whole of said principal sum hereby secured, and the interest to the time of sale, according to the tenor and effect of said indebtedness, shall and may at once become due and payable, anything in the said note to the contrary notwithstanding, and the said premises be sold in like manner and with the same effect as if the said indebtedness had matured; and it is further agreed and especially understood, that in case of death, resignation, removal

from the Territory or failure to act or any other inability of said party of the second part, then Merrick A. Rogers, shall be and hereby is appointed and made successor in trust herein, with like power and authority as the said party of the second part, and the said premises shall become vested in such new trustee accordingly.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

ANNA C. McCORMICK. [SEAL.]
ISAAC L. McCORMICK. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

I, Lewis B. France, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Isaac L. McCormick and Anna C. McCormick, who are personally known to me as the person- whose name- are subscribed to the within trust deed as part thereto and as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, the contents
278 and meaning having been fully explained by me.

And the said Anna C. McCormick, wife of the said Isaac L. McCormick, having been by me examined separate and apart and out of hearing of her husband and the contents and meaning of said deed of trust having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned without compulsion of her husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this third day of January, A. D. 1874.

[NOTARIAL SEAL.] LEWIS B. FRANCE,
Notary Public.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in book 59, at page 136.

[SEAL.] Witness my hand and official seal this 23d day of Aug., A. D. 1882.

WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

DEF'T'S EXHIBIT 17. John W. Webster, Examiner.

Trustees' Deed.

Anna C. McCormick *et al.*, by Trustee,
to
Joseph Gottlieb.

Filed for record 1¾ o'clock p. m., January 13th, 1879.
W. C. LOTHROP, *Recorder.*

This indenture made this tenth day of January in the year of our Lord one thousand eight hundred and seventy-nine between David H. Moffat trustee of the county of Arapahoe and State of Col-
279 orado party of the first part and Joseph Gottlieb of the county of Arapahoe and State of Colorado party of the second part. Witnesseth that whereas heretofore to wit on the first day of January, in the year of our Lord one thousand eight hundred and seventy-four, Isaac L. McCormick and Anna C. McCormick of the county of Arapahoe and Territory (now State) of Colorado by their certain deed of trust of that date filed for record in the office of the clerk and recorder of Arapahoe county in the Territory of Colorado on the third day of January A. D. 1874 and duly recorded on page 136 of Book 59 of said Arapahoe county records did convey to the undersigned David H. Moffat trustee party of the first part the real estate hereinafter described to secure to Samuel H. Thatcher the payment of their certain promissory note bearing even date with said deed of trust for the full sum of thirteen hundred and fifty (1,350) dollars payable two years after the date thereof with interest thereon from date until paid at the rate of twenty (20) per cent. per annum. And whereas default has been made in the payment of said promissory note and the interest accumulated thereon and whereas the said David H. Moffat trustee as aforesaid at the request of the legal holder of the note and for the purpose of paying the same and the unpaid interest thereon by the authority in him vested by said deed of trust as trustee did on the seventeenth day of December in the year of our Lord 1878, give public notice, that he would by virtue of the power and authority in him vested by said deed of trust, on the tenth day of January A. D. 1879 at the hour of ten o'clock a. m. of said day at the front door of the courthouse in the county of Arapahoe and State of Colorado sell the real estate in said deed of trust mentioned and hereinafter described at public auction for the highest and best price the same would bring in cash which said notice was duly published in the Democrat a daily newspaper published in the city of Denver county of Arapahoe and State of Colorado commencing on the seventeenth day of December A. D. 1878 and ending on the tenth day of Janu-
280 ary A. D. 1879 a certified and sworn copy of said notice of sale is here incorporated and made a part of this deed.

Trustee's Sale.

Whereas Isaac L. McCormick and Anna C. McCormick, of the county of Arapahoe and Territory (now State) of Colorado, by their certain deed of trust executed on the first day of January, A. D. 1874, and recorded on page 136 of Book 59 of the records of said Arapahoe county, in said Territory, did convey to David H. Moffat, as trustee, the following-described premises situate in Arapahoe county, to wit: Commencing at the southeast corner of the northeast quarter (¼) of section twenty-five (25), township three (3), range sixty-eight (68) west, thence north ten (10) chains, thence west twenty (20) chains, thence south ten (10) chains, thence east twenty (20) chains to the place of beginning, containing twenty (20) acres, be the same more or less, to secure the payment of their promissory note, bearing even date with said deed of trust, for the full sum of thirteen hundred and fifty ($1,350) dollars and interest thereon, as therein stated; and whereas the said note and interest thereon is long since due and remains unpaid: Now, therefore, by virtue of the power and authority in me vested by said deed of trust and at the request of the legal holder of the note aforesaid and for the purpose of paying the same and the interest accumulated thereon and the costs arising from said trust, I will, on the 10th day of January, A. D. 1879, at ten o'clock a. m., at the front door of the court-house in the county of Arapahoe, in said State, sell the property hereinbefore described, or so much thereof as may be necessary, at public auction for the highest and best price the same will bring in cash.

DAVID H. MOFFAT, *Trustee.*

J. W. HORNER, *Attorney.*

281 STATE OF COLORADO, } ss.:
County of Arapahoe, }

I, Thomas G. Anderson, of said county of Arapahoe, being duly sworn, say that I am one of the publishers of the Democrat, a daily newspaper printed and published in the city of Denver, in said county and State, and that the notice of which the annexed is a true copy has been published in said daily newspaper for twenty-four days, and that the first publication of said notice was in said paper bearing date the 17 day of December, A. D. 1878, and the last publication thereof in said paper bearing date Jan'y 10, 1879.

THOMAS G. ANDERSON.

Subscribed and sworn to before me this 11th day of January, A. D. 1879.

ROBERT D. THOMPSON,
Notary Public.

[NOTARIAL SEAL.]

Printer's fees, $5.00.
Received payment, Denver, Colo., —— —, 18—.

And whereas the said David H. Moffat, trustee, party of the first part, did on the tenth day of January, A. D. 1879, at the hour of

ten o'clock a. m. of said day, expose to sale at public auction, at the front door of the court-house in the county of Arapahoe and State of Colorado, for the highest and best price for cash, the real estate in said deed of trust mentioned, to wit: Commencing at the southeast corner of the northeast quarter (¼) of section twenty-five (25), township three (3), range sixty-eight (68) west, thence north ten (10) chains, thence west twenty (20) chains, thence south ten (10) chains, thence east twenty (20) chains to the place of beginning, containing twenty (20) acres, be the same more or less, and the highest and best bid for the real estate aforesaid was made by the party of the second part, being the sum of sixteen hundred (1,600) dollars, and, the said party of the second part being the highest and — bidder therefor, the said real estate was then and there and after due notice struck off to the said party of the second part for the sum aforesaid:

282 Now, therefore, I, David H. Moffat, trustee as aforesaid, in consideration of the premises hereinbefore stated and by virtue of the power and authority in me vested according to the tenor and provisions of said deed of trust and the power of sale therein contained, and in consideration of the sum of sixteen hundred (1,600) dollars, the highest and best sum bid as aforesaid for said real estate, to me in hand paid by the said Joseph Gottlieb, the receipt of which is hereby confessed and acknowledged, have granted, bargained, sold, and by these presents do hereby grant, bargain, sell, and convey unto the said Joseph Gottlieb, party of the second part, his heirs and assigns, commencing at the southeast corner of the northeast quarter (¼) of section twenty-five (25), township three (3), range sixty-eight (68) west, thence north ten (10) chains, thence west twenty (20) chains, thence south ten (10) chains, thence east twenty (20) chains to the place of beginning, containing twenty (20) acres, be the same more or less, situate, lying, and being in the county of Arapahoe and State of Colorado, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and all the right, title, interest, and equity of redemption of the said Isaac L. McCormick and Anna C. McCormick in and to the same; to have and to hold the same unto the said Joseph Gottlieb, party of the second part, his heirs and assigns forever.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

DAVID H. MOFFAT, JR., *Trustee.* [WAFER SEAL.]

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Sam. S. Landon, a notary public in and for said county, in the State aforesaid, do hereby certify that David H. Moffat, Jr., who is personally known to me to be the person whose name is sub-

283 scribed to the foregoing deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of January, A. D. 1879.

SAM. S. LANDON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in Book 104, at page 306.

[SEAL.] Witness my hand and official seal this 24th day of August, A. D. 1882.

WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep'y.*

"EXHIBIT 18." R. H. B. 9, 12, '82.

DEF'T'S EXHIBIT 18. John W. Webster, Examiner.

Chattel Mortgage.

Zella Glenmore
to
Joseph Gottlieb.

Filed for record 4 o'clock p. m., October 31st, 1876.
W. C. LOTHROP, *Recorder.*

Know all men by these presents that I, Zella Glenmore, of the city of Denver, in the county of Arapahoe and Territory of Colorado, party of the first part, for and in consideration of the sum of two thousand and seven hundred dollars to her in hand paid by Joseph Gottlieb, of the city of Denver and county of Arapahoe and Territory of Colorado, party of the second part, the receipt of which said sum is hereby acknowledged, do hereby grant, bargain, and sell unto the said party of the second part, his heirs and assigns, the following goods and chattels, to wit:

"284" The furniture and personal property at present in the brick dwelling-house number two hundred and forty-five (245) on Seventeenth street between Larimer & Holliday, in the east division of the city of Denver, consisting of the following articles: In front parlor, four (4) curtains, one (1) pier glass and stand, one (1) marble-top table, one (1) parlor set consisting of six (6) chairs, one (1) set-ee, one (1) Decker piano, one (1) piano stool, two (2) piano covers, three (3) pictures, one (1) chandelier, one (1) spit-oon, two (2) white shades, one (1) rug, one (1) set of covers for parlor set, and one (1) velvet carpet; in back parlor, one (1) parlor set of seven pieces, consisting of one (1) marble-top center table, five (5)

pictures, one (1) carpet, one (1) chandelier, one (1) pair lace curtains, one (1) lambrequin, one (1) heating stove, one (1) spit-oon, one (1) set of covers for this parlor set; in bedroom No. 1, one (1) carpet, one (1) sideboard, one (1) dressing case, one (1) sofa, and three (3) chairs, three (3) common chairs, two (2) stools, one (1) picture, one (1) marble-top table, one (1) stove and fixtures, one (1) coal-*schuttle*, one (1) pair lace curtains, one (1) lambrequin, three (3) rugs, two (2) brackets, two (2) bed curtains, in the center two (2) white bed curtains, four (4) covers for said, one (1) chandelier, one (1) other chandelier, one (1) bedstead, one (1) pair pillows, one (1) bolster, one (1) spring, two (2) mattr*asses*, (one (1) hair), two (2) white blankets, one (1) coverlid, four (4) sheets, two (2) sets of pillow-cases, one (1) rug, one (1) wardrobe, one (1) looking-glass, one (1) marble-top washstand, one (1) chamber set, one (1) carpet, one (1) book-case, one (1) commode, one (1) lamp, five (5) pictures, one (1) paper rack, one (1) curtain, one (1) lamb-equin, one (1) towel rack, and one (1) spit-oon; in bedroom No. 2, one (1) bedstead, spring box; one (1) b*ea*ureau and glass, one (1) washstand, one (1) looking-glass, three (3) bowls and pitchers, one (1) tin set, one (1) carpet, one (1) lamp, two (2) pictures, one (1) wardrobe, one (1) rocker; in bedroom No. 3, one (1) bedroom set, one (1) wardrobe, one (1) coal stove and fix-
285 tures, two (2) pillow slips, one (1) pair blankets, four (4) pillow cases, two (2) spreads, one (1) comforter, one — box-spring mattr*ass*, one (1) carpet, one (1) chamber set, one (1) tin set, one (1) looking-glass, two (2) pictures, one (1) table, one (1) hair chair, one (1) rocker, one (1) curtain and fixtures, one (1) lamp, and one (1) rug; in bedroom No. 4, one (1) bedstead, one (1) b*ea*ureau one (1) washstand, (1) looking-glass, one (1) box-spring mattr*ass*, three (3) chairs, one (1) pair of blankets, two (2) spreads, four — sheets, three (3) small pillows, one (1) tin set, one (1) carpet, one (1) picture, one (1) pair lace curtains and fixtures, one (1) lamp, and one (1) wardrobe; in bedroom No. 5, one (1) bedstead, spring box; one (1) b*ea*ureau and glass, one (1) washstand, one (1) looking-glass, three (3) bowels and pitchers, one (1) wardrobe, one (1) tin set, one — carpet, one (1) lamp, two (2) pictures, and (1) rocker; in bedroom No. 6, one (1) bedstead, spring box; one (1) b*ea*ureau and glass, one (1) washstand, one (1) looking-glass, three (3) bowels and pitchers, one (1) tin set, one (1) carpet, one (1) lamp, two (2) pictures, one (1) rocker, one (1) wardrobe, and one (1) stove; in bedroom No. 7, one (1) bedstead, spring box; one (1) b*ea*ureau and glass, one (1) washstand, one (1) looking-glass, three (3) bowls and pitchers, one (1) tin set, one (1) carpet, one (1) lamp, two (2) pictures, one (1) wardrobe, one (1) rocker, one (1) commode; in bedroom No. 8, one (1) bedstead, spring box; one (1) b*ea*ureau and glass, one — washstand, one (1) looking-glass, three (3) bowels and pitcher, one (1) tin set, one (1) carpet, one (1) lamp, two (2) pictures, one (1) wardrobe, one (1) rocker; in dining-room, six (6) chairs, one (1) table, one (1) stove, one (1) clock, one (1) lamp, six (6) table covers, one and a half dozen napkins, two (2) castors, one dozen (12) knives, forks, spoons each, two (2) but-er dishes, half dozen (6) goblets, one (1) cook stove, one (1) ice box, also one (1) upper-hall carpet,

one (1) lower-hall carpet, one (1) chandelier and stair carpet; to have and to hold all and singular the said goods and
286 chattels unto the said party of the second part, his heirs and assigns forever; and the said party of the first part, for herself, her heirs, executors, and administrators, does hereby covenant to and with the said party of the second part and his assigns that she is lawfully possessed of the same goods and chattels as her own property; that the same are free from all incumbrances, and that she will warrant and defend the same to the said party of the second part and his assigns against the lawful claims and demands of all persons: Provided, nevertheless, that if the said party of the first part, her heirs or personal representatives, shall pay or cause to be paid to the party of the second part or his assigns for the redemption of the above-bargained goods and chattels the just and good sum of two thousand and seven hundred dollars, on or before the eighteenth day of November, A. D. 1876, with interest on the same, according to the tenor and effect of a certain promissory note given by the said party of the first part and one Samuel H. Thatcher to the said party of the second part, bearing date on the eighteenth day of November, A. D. 1875, then these presents to be void; otherwise to be and remain in full force and effect; and provided further that until default be made by the said party of the first part in the performance of the condition above or the covenants below, it shall and may be lawful for the said party of the second part to retain possession of the said goods and chattels and to use and enjoy the same, but in case default shall be made in the payment of said note or the interest or any part thereof, according to the tenor and effect of said note, or if the said goods and chattels or any part thereof shall be attached or claimed by any other person or persons at any time before payment, or if the said party of the first part shall attempt to sell or remove the same without the written permission of the said party of the second part, or if the said goods and chattels shall be abused or injured beyond
287 the ordinary *ware* and *tare*, or if the said party of the second part shall have good grounds to fear the loss of his said claim, then it shall and may be lawfull for the said party of the second part or his assigns to take immediate and full possession of said goods and chattels to his own use and sell the same for the best price that can be obtained in cash, and out of the proceeds pay said note and interest and all expenses touching the same, rendering and paying the overpluss, if any, to the said party of the second part. This mortgage is given as collateral to another mortgage between the same parties, embracing the same property, bearing date on the eighteenth day of November, A. D. 1875, and to supply any defects in said first mortgage, but in no case is this mortgage to be construed as impa-ring in any manner the said first mortgage or any of its provisions.

Witness the following signature and seal this 31st day of October, A. D. 1876.

ZELLA GLENMORE. [SEAL.]

STATE OF COLORADO, } ss:
Arapahoe County, }

This mortgage was acknowledged before me by Zella Glenmore, the mortgagor, this 31st day of October, A. D. 1876.

[NOTARIAL SEAL.] SAM'L E. BROWNE,
Notary Public.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Wilbur C. Lothrop, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office as the same appears in Book 87, at page 265.

Witness my hand and official seal this 22nd day of August, A. D. 1882.

[SEAL.] WILBUR C. LOTHROP,
County Clerk and Recorder,
By CHAS. H. SCOTT, *Dep.*

288 DEF'T'S EXHIBIT 19. John W. Webster, Examiner.

This indenture, made this eighteenth day of November in the year of our Lord one thousand eight hundred and seventy — between Samuel H. Thatcher of the county of Arapahoe and Territory of Colorado, party of the first part, and David H. Moffat, Jr. of the same place party of the second part; witnesseth, that whereas, Zella Glenmore and Samuel H. Thatcher have executed their promissory note bearing even date herewith, payable to the order of Joseph Gottlieb of the city of Denver on or before one year after the date hereof, for the full sum of two thousand seven hundred dollars, with interest thereon from date at five per cent. per month until paid said interest due and payable monthly.

And whereas, the said Samuel H. Thatcher is desirous of securing not only the prompt payment of said promissory note, but also of effectually securing and indemnifying the said Joseph Gottlieb for or on account of any assignment, endorsement, or guarantee of said promissory note.

Now therefore, the said party of the first part, in consideration of the premises and for the purpose aforesaid, and in the further consideration of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed, has and hereby does grant, bargain, sell and convey unto the said party of the second part, his heirs assigns and successors in trust, forever, all the premises situate in the county of Douglas and Territory of Colorado, known and described as follows, to wit: The northwest quarter of section number thirty-three (33) in township number seven (7) south of range sixty-nine (69) west and the southwest quarter of section number twenty-eight (28) in township number seven (7) south of range sixty-nine west, containing three hundred

and twenty acres more or less, and it is expressly under-
289 stood and agreed that the chattel mortgage given to secure this same debt is to be executed before recourse is had to this trust deed. To have and to hold the same, together with all and singular the privileges and appurtenances thereunto belonging: In trust, nevertheless, that in case of default of payment of said note or any part thereof, or the interest thereon, according to the tenor and effect of said note then it shall and may be lawful for said party of the second part, his heirs, assigns, or successors in trust, to sell and dispose of the said premises, and all the right, title, benefit and equity of redemption of said party of the first part his heirs or assigns therein, at public auction, at the steps to the door of the court-house, in the city of Denver in the Territory of Colorado, for the highest and best price the same will bring in cash, twenty days' public notice having been previously given of the time of such sale by advertisement in one of the newspapers at that time published in said Denver city, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale and the purchase-money paid thereon, after first paying all costs of advertising and sale, commissions, and all other expenses of this trust, including all moneys advanced for taxes or other liens and assessments, with the interest thereon, to pay the principal and interest due on said note according to the tenor and effect thereof, rendering the overplus (if any) unto the said part- of the first part his legal representatives and assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money; which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part his heirs and assigns, and all other persons claiming the premises
290 aforesaid, or any part thereof, by, from, through or under said part- of the first part, or any of them; the holder or holders of the said note or notes may become the purchaser of said property or any part thereof, said party of the first part to pay all costs of this trust, including all moneys advanced for taxes and other liens and assessments, with interest thereon at five per cent. per month.

And the said Samuel H. Thatcher for him his heirs, executors and administrators, covenants and agrees to and with said party of the second part, his legal representatives or successors in trust, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee simple, and has good right, full power and lawful authority to grant, bargain and sell the same in manner and form as aforesaid, hereby fully and absolutely waiving and releasing all rights and claims he may have in or to said before-described premises as a homestead exemption, under and by virtue of any act of the General Assembly of the Territory of Colorado now existing or which may hereafter be passed in relation thereto, and that the same are free and clear of all liens and encumbrances whatever (except as hereinafter specified), and that he will pay all taxes

or assessments levied or assessed against said premises up to the time the said note shall become due and payable, or shall have been paid in full.

And it is stipulated and agreed, that in case of default in any of said payments of principal or interest, as aforesaid, or of a breach of any of the covenants or agreements herein, then, and in that case, the whole of said principal sum hereby secured, and the interest to the time of sale, according to the tenure and effect of said indebtedness, shall and may at once become due and payable, anything in the said note to the contrary notwithstanding, and the said premises to be sold in like manner and with the same
291 effect as if the said indebtedness had matured. And it is further agreed and especially understood that in case of death, resignation removal from the — or failure to act, or other inability of said party of the second part, then the acting sheriff of Arapahoe county shall be and hereby is appointed and made successor in trust herein, with like power and authority as the said party of the second part, and the said premises shall become vested in such new trustee accordingly.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

SAMUEL H. THATCHER. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

I, Daniel Sayr, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Samuel H. Thatcher, who is personally known to me to be the person whose name is subscribed to the within trust deed as party thereto and as having executed the same, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth, the contents and meaning having been fully explained by me.

Given under my hand and notarial seal this eighteenth day of November, A. D. 1875.

(Signed) DANIEL SAYR, [NOTARIAL SEAL.]
Notary Public.

STATE OF COLORADO, } ss:
County of Douglas, }

I, Harry Jones, county clerk in and for said county, in the State aforesaid, hereby certify that the above and foregoing is an exact and full copy of the record of the original as the same ap-
292 pears on pages 57, 58, and 59 of Book "H" of the records of my office.

Witness my hand and official seal, at Castle Rock, this 23 August, A. D. 1882.

[SEAL.] HARRY JONES,
County Clerk.

(Endorsed:) No. —. Deed of trust. From Samuel H. Thatcher to D. H. Moffat, Jr., trustee, for use of Joseph Gottlieb.

TERRITORY OF COLORADO, } ss:
County of Douglas, }

I hereby certify that this deed was filed for record in my office, at 2 o'clock p. m., 20th November, 1875, and is duly recorded in Book —, page No. —.

S. M. DYER, *Recorder.*

DEF'T'S EXHIBIT 20. John W. Webster, Examiner.

Trustee's Deed.

David H. Moffat, Jr., trustee,
to
Joseph Gottlieb.

Filed for record the 22nd day of Febr'y, 1877, @ 10 o'clock a. m.
S. M. DYER, *Recorder.*

This indenture made this seventeenth day of February in the year of our Lord one thousand eight hundred and seventy-seven between David H. Moffat Jr. of the county of Arapahoe and State of Colorado, party of the first part, and Joseph Gottlieb of the county of Arapahoe and State of Colorado, party of the second part; witnesseth, That whereas, Samuel H. Thatcher of the county of Arapahoe and State of Colorado, did, by certain trust deed, dated the 18th day of November A. D. 1875, which said deed was recorded in the office of the county clerk and recorder of the county of Douglas in the then Territory of Colorado, on the 20th day of November A. D. 1875, in Book "H" on pages 57, 58 & 59 convey to the said party of the first part all the premises hereinafter described, to secure the payment of a certain promissory note in said deed particularly mentioned, and upon certain conditions in said deed particularly declared; and whereas default hath been made in the
293 payment of the said promissory note the said premises having, by the said party of the first part, been duly advertised for public sale at the southerly steps of the court-house, in the county of Arapahoe and State of Colorado on the 30th day of December, A. D. 1876 for the period of thirty days and in the manner provided by said trust deed, were, upon the day and year, and at the place last mentioned, aforesaid, in pursuance of said notice, sold at public sale and at the said sale the said party of the second part, was the highest and best bidder therefor and bid for the tract hereinafter described the sum of three hundred and twenty dollars. Now, therefore, these presents witness, that the said party of the first part in pursuance of the power and authority in him vested in and by the said trust deed and in consideration of the sum of one dollar, and also the further sum of three hundred and twenty dollars to the said party of the second part the receipt whereof is hereby

acknowledged, hath and doth hereby convey, remise, release and quitclaim to the said party of the second part, his heirs and assigns forever, all the right title and interest, as well in law as in equity which the said party of the first part hath acquired by virtue of the trust deed above mentioned, of, in and to all the following-described tracts, pieces or parcels of land situate lying and being in the county of Douglas and State of Colorado to wit: The northwest quarter of section thirty-three in township seven south of range sixty-nine west and the southwest quarter of section twenty-eight in township seven south of range sixty-nine west containing three hundred and twenty acres more or less together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions remainders rents issues and profits thereof; and also all the estate, right, title, interest, claims and demand whatsoever, as well in law as in equity
294 of the said party of the first part, of, in and to the same, and any and every part thereof, with the appurtenances which the said party of the first part acquired by virtue of said trust deed to have and to hold the aforesaid right title and interest of the said party of the first part into the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said party of the first part can by virtue of the power and authority in him vested by said trust deed, convey the same.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) DAVID H. MOFFAT, JR., *Trustee.* [SEAL.]

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, John C. Anderson, a notary public in and for said county, in the State aforesaid, do hereby certify that David H. Moffat, Jr., personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-first day of February, A. D. 1877.

[NOTARIAL SEAL.] JOHN C. ANDERSON,
Notary Public.

STATE OF COLORADO, } ss:
County of Douglas, }

I, Harry Jones, county clerk in and for said county, in the State aforesaid, hereby certify that the above and foregoing is an exact and full copy of the record of the original, as the same appears on pages 324, 325, & 326 of Book H of the records of my office.

Witness my hand and official seal this 23 August, 1882.

HARRY JONES,
County Clerk.

295 DEF'T'S EXHIBIT 21. John W. Webster, Examiner.

TREASURER'S OFFICE, ARAPAHOE COUNTY, *M'ch 29th*, 1878.

Received of Lewis C. Thatcher the sum of three $\frac{5}{100}$ dollars, by Samuel H. Thatcher, attorney-in-fact.

In full for county, State, school, interest on D. P. R. R. bonds, interest on D. & S. P. and P. R. R. bonds and interest on jail bonds, mute and blind, university, agricultural college, school of mines, Denver city, special school, and military poll on the following property for the year 1877:

Lots.	Block.	Div.	Lots.	Block.	Div.	Description.	Sec.	Town.	Range.
.....	.....	.....	.....	.....	.....	S. ½ of S. E. ¼ of W. E. ¼	25	3	68

	Dollars.	*Cts.*
County tax	1	00
State tax		50
School tax		35
Int. on D. P. R. R. bonds		30
" D. & S. P. R. R. b'ds		25
" jail bonds		4
Mute and blind		2
University		2
Agricultural college		1
School of mines		1
Denver city		
Special school		55
Interest		
Advertising		
Military poll		
Total	3	05

Total valuation of property, $100.

JNO. L. DAILEY,
Treasurer of Arapahoe County.

DEF'T'S EXHIBIT 22. John W. Webster, Examiner.

TREASURER'S OFFICE, ARAPAHOE COUNTY, *M'ch* 29, 1878.

Received of Lewis C. Thatcher the sum of eighty $\frac{45}{100}$ dollars, by Samuel H. Thatcher, att'y-in-fact.

In full for county, State, school, interest on D. P. R. R. bonds, interest on D. & S. P. and P. R. R. bonds, and interest on jail bonds, mute and blind, university, agricultural college, school of mines, Denver city, special school, and military poll on the following property for the year 1877:

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Lots.	Block.	Div.	Lots.	Block.	Div.	Description.	Sec.	Town.	Range.
27	78	E.D.	.....	.....	.....	N. E. ¼ S. E. ¼	26	1	67
4	165	"	.....	.....	.....	S. E. ¼	24	3	67
						N. E. ¼	24	1	67
						S. W. ¼	24	1	67
						S. E. ¼ S. E. ¼	26	1	67

	Dollars.	*Cts.*
County tax	25	10
State tax	12	55
School tax	8	79
Int. on D. P. R. R. bonds	7	53
" D. & S. P. R. R. b'ds	6	28
" jail bonds	1	00
Mute and blind		50
University		50
Agricultural college		25
School of mines		25
Denver city	9	10
Special school, 1	5	00
24	3	60
Advertising		
Military poll		
Total	80	45

Total valuation of property, $2,510.

JNO. L. DAILEY,
Treasurer of Arapahoe County.

DEF'T'S EXHIBIT 23. John W. Webster, Examiner.

Duplicate.

TREASURER'S OFFICE, ARAPAHOE COUNTY, *March* 10, 1879.

Received of L. C. Thatcher the sum of one hundred & one .07 dollars.

In full for county, school, payment on D. P. R. R. bonds, interest on D., S. P. and P. R. R. bonds, and interest on jail bonds, State, mute and blind, university, agricultural college, school of mines, Denver city, special school, and military poll on the following property for the year 1878:

Lots.	Block.	Div.	Lots.	Block.	Div.	Description.	Sec.	Town.	Range.
27	78	E.D.				N. E. ¼	24	1	67
4	165	"				S. W. ¼	"	"	"
						E. ½ S. E. ¼	26	1	"
						S. E. ¼	24	3	"

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	Dollars.	*Cts.*
County tax	30	17
School tax	12	43
Paym't on D. P. R. R. bonds	8	88
Int. on D. P. R R. bonds	12	42
" D. & S. P. R. R. b'ds	8	87
" jail bonds	1	42
State tax	10	65
Mute and blind		71
University		71
Agricultural college		35
School of mines		36
Denver city tax	9	10
Special school tax No. 1	5	
Interest		
Advertising		
Military poll		
Total	101	07

Total value of property, $3,550.

JOHN L. DAILEY,
Treasurer of Arapahoe County,
Per H.

DEF'T'S EXHIBIT 24. John W. Webster, Examiner.

TREASURER'S OFFICE, ARAPAHOE COUNTY, *Febr'y* 10, 1880.

Received of Lewis C. Thatcher the sum of one hundred & fifty-nine $\frac{18}{100}$ dollars, in full for county, school, payment on D. P. R. R. bonds, interest on D., S. P. and P. R. R. bonds and interest on jail bonds, sheep inspectors' fund, State, mute and blind, university, agricultural college, school of mines, round-up fund, Denver city, special school, military poll, and town of Highlands on the following property for the year 1879:

Lots.	Block.	Div.	Lots.	Block.	Div.	Description.	Sec.	Town.	Range.
27	78	E.D.	.....	.....	.....	N. E. $\frac{1}{4}$	24	1	67
4	165	"	.....	.....	.....	S. W. $\frac{1}{4}$	"	"	"
						E. $\frac{1}{2}$ S. E. $\frac{1}{4}$	26	"	"
						S. E. $\frac{1}{4}$	24	3	67

	Dollars.	*Cts.*
County tax	109	98
Sheep inspectors' tax		
State tax	30	55
Round-up tax		
Denver city tax	11	90
Military poll		
Town of Highlands		
Special school 1	5	95
Interest, 24		80
Advertising		
Total	159	18

Total value of property, $6,110.

JNO. L. DAILEY,
Treasurer of Arapahoe County.

298 DEF'T'S EXHIBIT 25. John W. Webster, Examiner.

Redemption certificate No. —.

TREASURER'S OFFICE,
Arapahoe County, State of Colorado, } *ss:*

I hereby certify that the real estate hereinafter described, situate in the county of Arapahoe and State of Colorado, which was sold for delinquent taxes for the year 1872 on the 24 day of April, 1873, has been this day redeemed by Lewis C. Thatcher by the payment to me of the respective sum of money set opposite said tract, being the amount due thereon as provided by law, to wit:

Description of land redeemed.					Amount paid.	
Part of section or lot.	Section or block.	Township, town, or city	Range, division, or addition.	Number of acres.	Dollars.	Cents.
S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$	25	3	68	.....	33	75
Certificate & recording	.....	.....	.....	.....	1	10

In witness whereof I have hereunto set my hand and seal this 28 day of March, 1878.

JNO. L. DAILEY, [SEAL.]
County Treasurer.

(Endorsed:) Certificate of redemption to Lewis C. Thatcher.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I hereby certify that the within certificate of redemption was entered in the record of lands & lots sold for taxes in my office this 29 day of M'ch, A. D. 1878.

W. C. LOTHROP,
County Clerk, Arapahoe County.

DEF'T'S EXHIBIT 26. John W. Webster, Examiner.

Redemption certificate No. —.

TREASURER'S OFFICE, } ss:
Arapahoe County, State of Colorado, }

299 I hereby certify that the real estate hereinafter described, situate in the county of Arapahoe and State of Colorado, which was sold for delinquent taxes for the year 1875 on the 23 day of May, 1876, has been this day redeemed by Lewis C. Thatcher by the payment to me of the respective sum of money set opposite each tract, being the amount due thereon as provided by law, to wit:

Description of land redeemed.					Amount paid.	
Part of section or lot.	Section or block.	Township, town, or city.	Range, division, or addition.	Number of acres.	Dollars.	Cents.
57. S. ½ of S. E. ¼ of N. E. ¼	25	3	68		33	19
63. N. E. ¼ of S. E. ¼	24	3	67		5	28
N. W. ¼ of S. E. ¼	24	3	67		5	28
S. W. ¼ " S. E. ¼	24	3	67		5	28
S. E. ¼ " S. E. ¼	24	3	67		5	28
27	78	E. D.			49	57
356. Subsequent tax for 1876					32	87
Certificate and recording					1	70
					138	45

In witness whereof I have hereunto set my hand and seal this 28th day of March, 1878.

JNO. L. DAILEY, [SEAL.]
County Treasurer.

(Endorsed:) Certificate of redemption to Lewis C. Thatcher.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I hereby certify that the within certificate of redemption was entered in the record of lands & lots sold for taxes in my office this 29 day of M'ch, A. D. 1878.

W. C. LOTHROP,
County Clerk, Arapahoe County.

DEF'T'S EXHIBIT 27. John W. Webster, Examiner.

Redemption certificate No. —.

TREASURER'S OFFICE, } ss:
Arapahoe County, State of Colorado, }

300 I hereby certify that the real estate hereinafter described, situate in the county of Arapahoe and State of Colorado, which was sold for delinquent taxes for the year 1876 on the — day of ——, 1877, has been this day redeemed by Lewis C. Thatcher by the payment to me of the respective sum of money set opposite each tract, being the amount due thereon as provided by law, to wit:

Description of land redeemed.					Amount paid.	
Part of section or lot.	Section or block.	Township, town, or city.	Range, division, or addition.	Number of acres.	Dollars.	Cents.
79. N. E. ¼ S. E. ¼	24	3	67		3	55
N. W. ¼ S. E. ¼	"	"	67		3	55
S. W. ¼ S. E. ¼	"	"	"		3	55
S. E. ¼ S. E. ¼	"	"	"		3	55
71. S. ½ S. E. ¼ N. E. ¼	25	3	68		14	60
4	165	E. D.			9	30
Certificate & recording					1	50
					$39	60

In witness whereof I have hereunto set my hand and seal this 28 day of March, 1878.

JNO. L. DAILEY, [SEAL.]
County Treasurer.

(Endorsed:) Certificate of redemption to Lewis C. Thatcher.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I hereby certify that the within certificate of redemption was entered in the records of lands & lots sold for taxes in my office this 29 day of M'ch, A. D. 1878.

W. C. LOTHROP,
County Clerk, Arapahoe County.

301 DEF'T'S EXHIBIT 28. John W. Webster, Examiner.

Pleas before the honorable the supreme court of the Territory of Colorado, at a term thereof begun and holden in the court-house, at the city of Denver, in said Territory, on Saturday, the tenth (10) day of July, A. D. 1875.

Present: Honorable Moses Hallett, chief justice; Honorable Amherst W. Stone, associate justice; Honorable Andrew W. Brazee, associate justice; C. C. Tomkins, United States marshal, and John W. Webster, clerk of said court.

SAMUEL H. THATCHER, Appellant, } 174. Appeal from District Court
v. } of Arapahoe County.
SAMUEL KAUCHER, Appellee. }

Now, on this day, comes the said appellant, by H. R. Hunt, Esq., and Bela M. Hughes, Esq., his attorneys, and the said appellee, by Messrs. Charles and Phelps, his attorneys, also comes, and this cause coming on to be heard, as well upon the transcript of judgment and other proceedings had in said district court for the county of Arapahoe, as also upon the matters herein assigned for error, and the same having been argued by counsel, it appears to the court that there is no error in the record and proceedings aforesaid or in giving judgment aforesaid, and it is considered by the court that the judgment in form aforesaid given be in all things affirmed and stand in full force and effect; that the opinion of the court filed herein be recorded, and that the said appellee do have and recover of and from the said appellant his costs and charges in this behalf expended, to be taxed, and that he have execution therefor.

302 DEF'T'S EXHIBIT 29. John W. Webster, Examiner.

And afterwards and on, to wit, the 12th day of July, A. D. 1875, the said appellant filed herein his præcipe for writ of error in the following words and figures, to wit:

THE UNITED STATES OF AMERICA, } *ss:*
Territory of Colorado, Supreme Court of said Territory, }

The clerk of the supreme court of the Territory of Colorado, according to the form of the statute in such case made and provided, will please issue writ of error in the cause of Samuel H. Thatcher, appellant, against Samuel Kaucher, appellee, in a case lately determined in said supreme court; said writ of error in accordance with law, and to carry said case on error to the Supreme Court of the United States.

BELA M. HUGHES,
H. R. HUNT,
Att'ys for Appellant.

To John W. Webster, clerk of said court, &c.
Denver, Colorado, July 12, 1875.

Endorsed as follows: Samuel H. Thatcher, appellant, *v.* Samuel Kaucher, appellee. Præcipæ. Filed July 12, 1875. Jno. W. Webster, clerk.

DEF'T'S EXHIBIT 30. John W. Webster, Examiner

And afterwards and on, to wit, the 14th day of July, A. D. 1875, the said appellant filed herein the citation to said appellee and a copy of the writ of error from the Supreme Court of the United States in words and figures as follows, to wit:

In the Matter of SAMUEL H. THATCHER, Appellant, against SAMUEL KAUCHER, Appellee, Lately Determined in the Supreme Court of Colorado Territory.

The United States of America to Samuel Kaucher and John Q. Charles, your attorney of record, Greeting:

303 You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be begun and held at Washington, the seat of government of the United States, on the second Monday of October next, A. D. 1875, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Colorado, wherein Samuel H. Thatcher is plaintiff in error and you, the said Samuel Kaucher, are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, chief justice of the Territory of Colorado, and a duly certified copy of a writ of error, with the seal of the supreme court of said Territory affixed in said cause, this second Monday of October, in the year of our Lord one thousand eight hundred and seventy-four.

MOSES HALLETT,
C. J. Sup. Court, Col. Ter.

UNITED STATES, }
Territory of Colorado, } *ss:*

Hamilton R. Hunt, being duly sworn, upon oath says that he is one of the attorneys of record of the within-named Samuel H. Thatcher, plaintiff in error; that, as such attorney and for the said plaintiff in error, he did duly execute and serve the within original citation and accompanying copy of writ of error on the within-named Samuel Kaucher, defendant in error, by reading a true and correct copy thereof to John Q. Charles, the attorney of record of the said defendant in error, and at the same time exhibiting the original citation and copy of writ of error, and leaving a true and correct copy thereof with said attorney this 14th day of July, A. D. 1875.

HAMILTON R. HUNT.

Subscribed and sworn to before me this 14th day of July, A. D. 1875.

[Seal Sup. Ct. Col.]

JNO. W. WEBSTER,
Clerk Supreme Court.

304 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the Territory of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court, before you, between Samuel H. Thatcher, appellant, and Samuel Kaucher, appellee, manifest error has happened, to the great damage of the said Samuel H. Thatcher, as by his complaint appears, we, being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October, A. D. 1875, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the errors what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this second Monday of October, in the year of our Lord one thousand eight hundred and seventy-four.

JOHN W. WEBSTER,
Clerk of the Supreme Court of Colorado Territory.

TERRITORY OF COLORADO, *ss:*

I, John W. Webster, clerk of the supreme court of the Territory of Colorado, do hereby certify that the above and foregoing
305 is a true, correct, and complete copy of the writ of error filed in my office in the above-entitled cause on this twelfth day of July, A. D. 1875, as the same appears from the files of this office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the supreme court at Denver this 12th day of July, A. D. 1875.

[Seal Sup. Ct. Col. Ter.]

JNO. W. WEBSTER,
Clerk Supreme Court.

SAMUEL H. THATCHER, Plaintiff in Error,
vs.
SAMUEL KAUCHER, Defendant in Error.

Copy of writ of error lodged, in pursuance of the statutes of the United States in such case made and provided, for the above-named Samuel Kaucher, defendant in error, in the clerk's office of the supreme court of the Territory of Colorado.

H. R. HUNT,
Att'y for Plaintiff in Error.

Endorsed as follows: Samuel H. Thatcher, pl'ff in error, *v.* Samuel Kaucher, def't in error. Citation and writ of error. Filed July 14, 1875. Jno. W. Webster, clerk.

DEF'T'S EXHIBIT 31. John W. Webster, Examiner.

And afterwards and on, to wit, the 28th day of January, A. D. 1878, there was filed herein the mandate of the Supreme Court of the United States in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Colorado, Greeting:

306 Whereas lately, in the supreme court of the Territory of Colorado, in a cause between Samuel H. Thatcher, appellant, and Samuel Kaucher, appellee, wherein the judgment of the said supreme court entered in said cause on the 10th day of July, A. D. 1875, is in the following words, viz:

"Now, on this day, comes the said appellant, by H. R. Hunt, Esq., and Bela M. Hughes, Esq., his attorneys, and the said appellee, by Messrs. Charles and Phelps, his attorneys, also come. This cause coming on to be heard as well upon the transcript of judgment and other proceedings had in said district court for the county of Arapahoe, as also upon the matters herein assigned for error, and the same having been argued by counsel, it appears to the court that there is no error in the record and proceedings aforesaid or in giving judgment aforesaid; and it is considered by the court that the judgment in form aforesaid given be in all things affirmed and stand in full force and effect; that the opinion of the court filed herein be recorded, and that the said appellee do have and recover of and from the said appellant his costs and charges in this behalf expended, to be taxed, and that he have execution therefor," as by the inspection of the transcript of the record of the said supreme court which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided fully and at large appears;

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-seven, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by the court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs, and that the said appellee, Samuel Kaucher, recover against the said
307 appellant for his costs herein expended and have execution therefor.

And it is further ordered that the cause be, and the same is hereby, remanded to the supreme court of the State of Colorado.

17TH DECEMBER, 1877.

And the same is hereby remanded to you, the said judges of the said supreme court of the State of Colorado, in order that such execution and proceedings may be had in the said cause, in conformity to the judgment and decree of this court above stated, as according to right and justice and the Constitution and laws of the United States ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-second day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Costs of appellee paid by appellant.

Endorsed as follows: 174. No. 126. October term, 1877. Mandate. Supreme Court United States. Thatcher *v.* Kaucher. Filed in supreme court this 28th Jan'y, 1878. Keyes Danforth, clerk.

STATE OF COLORADO, } *ss:*
Supreme Court, }

I, James A. Miller, clerk of the supreme court of the State of Colorado, do hereby certify the foregoing to be a true copy of the original judgment of the supreme court of the Territory of Colorado entered in a certain cause wherein Samuel H. Thatcher was appellant and Samuel Kaucher was appellee, on the 10th day of July, A. D. 1875, and now remaining of record in my office, together with full and correct copies of the precipe for writ of error, the citation, the copy of the writ of error from the Supreme Court of the United States therein, and the mandate of the Supreme Court of the United States as the same appears from the files in said cause now in my office.

308 Witness my hand and the seal of the supreme court of the State of Colorado affixed at my office, at the city of Denver, this 24th day of July, A. D. 1882.

[SEAL.]

JAMES A. MILLER,
Clerk Supreme Court, Col.

DEF'T'S EXHIBIT 32. John W. Webster, Examiner.

Received, Denver, May 31st, 1875, from Sam. H. Thatcher, as collateral security for the payment of his note of $1,000, dated May 31, 1875, payable to Gray & Eicholtz, Anna C. McCormick note of $1,350.00, dated January 3d, 1874; the said note to be returned on payment of his note of $1,000 in our favor.

GRAY AND EICHOLTZ.

EXHIBIT R. John W. Webster, Examiner.

In the Circuit Court of the United States, District of Colorado.

JOSEPH GOTTLIEB, Compl't,
against
LEWIS C. THATCHER, Def't.

STATE OF COLORADO,
County of Arapahoe, } *ss:*

Joseph Gottlieb, of said county and State, being duly sworn, deposes and says that he is the complainant in the above-entitled cause; that he desires to introduce in evidence on his own behalf on the trial of this cause a certain deed of conveyance of lands in the county of Elbert, in this State, made by one Sam'l H. Thatcher to one Lewis C. Thatcher, bearing date November 13, 1876, and which was duly recorded in the records of deeds in said county of Elbert, Book No. 2, page 76.

309 That the original of said deed is not in his possession, and it is not in his power to produce the same; & further deponent saith not.

Subscribed & sworn to before me Sept , 1882.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 27th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

EXHIBIT Q. John W. Webster, Examiner.

In the Circuit Court of the United States, District of Colorado.

JOSEPH GOTTLIEB, Compl't,
against
LEWIS C. THATCHER, Def't.

STATE OF COLORADO,
County of Arapahoe, } *ss:*

Joseph Gottlieb, of said county and State, being duly sworn, deposes and says that he is the complainant in the above-entitled cause; that he desires to introduce in evidence on his own behalf

On consideration whereof it is now here ordered and adjudged by the court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs, and that the said appellee, Samuel Kaucher, recover against the said
307 appellant for his costs herein expended and have execution therefor.

And it is further ordered that the cause be, and the same is hereby, remanded to the supreme court of the State of Colorado.

17TH DECEMBER, 1877.

And the same is hereby remanded to you, the said judges of the said supreme court of the State of Colorado, in order that such execution and proceedings may be had in the said cause, in conformity to the judgment and decree of this court above stated, as according to right and justice and the Constitution and laws of the United States ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-second day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Costs of appellee paid by appellant.

Endorsed as follows: 174. No. 126. October term, 1877. Mandate. Supreme Court United States. Thatcher *v.* Kaucher. Filed in supreme court this 28th Jan'y, 1878. Keyes Danforth, clerk.

STATE OF COLORADO, } *ss:*
Supreme Court, }

I, James A. Miller, clerk of the supreme court of the State of Colorado, do hereby certify the foregoing to be a true copy of the original judgment of the supreme court of the Territory of Colorado entered in a certain cause wherein Samuel H. Thatcher was appellant and Samuel Kaucher was appellee, on the 10th day of July, A. D. 1875, and now remaining of record in my office, together with full and correct copies of the precipe for writ of error, the citation, the copy of the writ of error from the Supreme Court of the United States therein, and the mandate of the Supreme Court of the United States as the same appears from the files in said cause now in my office.

308 Witness my hand and the seal of the supreme court of the State of Colorado affixed at my office, at the city of Denver, this 24th day of July, A. D. 1882.

[SEAL.]

JAMES A. MILLER,
Clerk Supreme Court, Col.

DEF'T'S EXHIBIT 32. John W. Webster, Examiner.

Received, Denver, May 31st, 1875, from Sam. H. Thatcher, as collateral security for the payment of his note of $1,000, dated May 31, 1875, payable to Gray & Eicholtz, Anna C. McCormick note of $1,350.00, dated January 3d, 1874; the said note to be returned on payment of his note of $1,000 in our favor.

GRAY AND EICHOLTZ.

EXHIBIT R. John W. Webster, Examiner.

In the Circuit Court of the United States, District of Colorado.

JOSEPH GOTTLIEB, Compl't,
against
LEWIS C. THATCHER, Def't.

STATE OF COLORADO,
County of Arapahoe, } *ss:*

Joseph Gottlieb, of said county and State, being duly sworn, deposes and says that he is the complainant in the above-entitled cause; that he desires to introduce in evidence on his own behalf on the trial of this cause a certain deed of conveyance of lands in the county of Elbert, in this State, made by one Sam'l H. Thatcher to one Lewis C. Thatcher, bearing date November 13, 1876, and which was duly recorded in the records of deeds in said county of Elbert, Book No. 2, page 76.

309 That the original of said deed is not in his possession, and it is not in his power to produce the same; & further deponent saith not.

Subscribed & sworn to before me Sept , 1882.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 27th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

EXHIBIT Q. John W. Webster, Examiner.

In the Circuit Court of the United States, District of Colorado.

JOSEPH GOTTLIEB, Compl't,
against
LEWIS C. THATCHER, Def't.

STATE OF COLORADO,
County of Arapahoe, } *ss:*

Joseph Gottlieb, of said county and State, being duly sworn, deposes and says that he is the complainant in the above-entitled cause; that he desires to introduce in evidence on his own behalf

on the trial of this cause a certain deed of conveyance of lands in the county of El Paso, in this State, made by one Samuel H. Thatcher to one Lewis C. Thatcher, bearing date November 13, 1876, and which was duly recorded in the records of deeds in said county of El Paso, Book R, page 283.

That the original of said deed is not in his possession, and it is not in his power to produce the same; and further deponent saith not.

Subscribed and sworn to before me Sept., 1882.

JOSEPH GOTTLIEB.

Subscribed and sworn to before me this 27th day of September, A. D. 1882.

JOHN W. WEBSTER, *Examiner.*

310 EXHIBIT R. John W. Webster, Examiner.

This deed, made this thirteenth day of November in the year of our Lord one thousand eight hundred and seventy-six between Samuel H. Thatcher of the county of Arapahoe and State of Colorado, of the first part, and Louis C. Thatcher of the county of Arapahoe and State of Colorado, of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of two thousand dollars, to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed and quitclaimed, and by these presents does remise, release, sell, convey and quitclaim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part has in and to the following-described real estate situate, lying and being in the county of Elbert and State of Colorado, to wit: The northeast quarter and the southeast quarter of section numbered twenty-eight (28) in township numbered six (6) south of range numbered sixty-three (63) west, said interest of said grantor being the undivided one-fifth part of each of said quarter sections and certain tax titles to all of said quarter sections. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

SAMUEL H. THATCHER. [SEAL.]

Signed, sealed, and delivered in presence of—

——, ——.

311 STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Hutton Crater, a notary public in and for said county, in the State aforesaid, do hereby certify that Samuel H. Thatcher, who is personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this
[NOTARIAL SEAL.] thirteenth day of November, A. D. 1882.

HUTTON CRATER,
Notary Public.

STATE OF COLORADO, }
County of Elbert. }

I, E. P. Clark, county clerk in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true copy of the record of the deed of Samuel H. Thatcher to Louis C. Thatcher as recorded in Book No. 2, page 76, and that the same was filed for record at 10 o'clock a. m., November 21st, 1876.

Witness my hand and official seal this 12th day of Sep-
[SEAL.] tember, A. D. 1882.

E. P. CLARK,
County Clerk and Recorder.

(Endorsed:) Copy of No. —. Quitclaim deed. Samuel H. Thatcher to Louis C. Thatcher. Filed for record at 10 o'clock a. m., November 21, 1876, and duly recorded in Book 2, page No. 76. E. P. Clark, recorder.

EXHIBIT Q. John W. Webster, Examiner.

This deed, made this thirteenth day of November in the year of our Lord one thousand eight hundred and seventy-six between Samuel H. Thatcher of the county of Arapahoe and State of Colorado, of the first part, and Lewis C. Thatcher of the county of Arapahoe and State of Colorado, of the second part: wit-
312 nesseth:

That the said party of the first part, for and in consideration of the sum of two thousand dollars, to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns, forever, all the following-described lots or parcels of land, situate, lying and being in the county of El Paso and State of Colorado, to wit:

The southwest quarter of section numbered ten (10) and the northwest quarter of section numbered eleven (11) in township numbered twelve (12) south of range numbered sixty-five (65) west.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances, to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Samuel H. Thatcher party of the first part, for himself & his heirs, executors and administrators, does covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance in law in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in man-
313 ner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs, and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year above written.

SAMUEL H. THATCHER. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

STATE OF COLORADO, }
County of Arapahoe, } ss:

I, Hutton Crater, a notary public in and for said county, in the State aforesaid, do hereby certify that Samuel H. Thatcher, who is personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this thirteenth day of November, A. D. 1876.

[NOTARIAL SEAL.] HUTTON CRATER,
Notary Public.

Filed for record the 17th day of November, A. D. 1876, at 8 o'clock a. m.

STATE OF COLORADO, } ss:
County of El Paso, }

I, the undersigned, clerk and recorder in and for said county and State, do hereby certify that the above is a true, correct, and complete copy of a certain warranty deed made by Samuel H. Thatcher to Lewis C. Thatcher and recorded in the El Paso county records of deeds, in Book "B," at page 283; that I have compared
314 the same with the original record thereof and find the same a true copy and of the whole thereof.

In testimony whereof I have hereunto set my hand and official seal this 9th day of September, A. D. 1882.

[SEAL.]

E. J. EATON,
County Clerk and Recorder.

(Endorsed:) Warranty deed. Samuel H. Thatcher to Lewis C. Thatcher. Certified copy.

STATE OF COLORADO, } ss:
El Paso County, }

I hereby certify that this deed was filed for record in my office at — o'clock — m., —— —, 188–, and is duly recorded in Book —, page —.

—— ——, *Recorder.*

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

To the honorable the judge of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, one of the examiners in chancery of said circuit court, to whom this above-entitled cause was referred to take testimony therein on the part of both parties, by virtue of the order of said court, a copy of which is hereto annexed, also by virtue of an order by me made fixing time and place therefor and notice to opposing counsel, do hereby most respectfully certify and report unto your honor that G. S. Richards, Chas. H. Scott, Lewis C. Thatcher, Joseph Gottlieb, Robert R. McCormick, William A. Smith, Edward A. Reser, witnesses on behalf of complainant, and Philip Trounstine, Marks Amter, Lewis C. Thatcher, William Trounstine, Robert S. Wilson, Freeman F. Hill, Joseph Soloman, John S. M. Foster, John P. Lower, Augustus Potter, John J. Maxey, James U. Marlow, Evan G. Owens, Fred Z. Salomon, Owen E. Le Fevre, Kate P. Mace, G. S. Richards, William H. Saulsbury,
315 David W. Hart, Leonard H. Eicholtz, witnesses on behalf of defendant, and Andrew C. Wright, Samuel Leach, Joseph T. Cornforth, Carlos Gove, Andrew C. Haynes, E. Kinsley Smith, Chas. H. Scott, John L. Dailey, P. Franklin, John R. Hanna, Frank

Church, and George Ruble, witnesses on behalf of complainant in rebuttal, were duly examined before me, who, previous to the commencement of their respective examinations in this cause, were by me first duly cautioned and sworn upon their respective oaths to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said Joseph Gottlieb, complainant, and the said Lewis C. Thatcher, defendant, in this cause; that the testimony of the said witnesses was taken and reduced to writing by me, and after the same had been so taken and reduced to writing the testimony of said witnesses was read to them by me in their presence and the presence of counsel for the respective parties, and thereupon the same was subscribed and sworn to by them respectively before me, the oath being administered by me, at my office, in the city of Denver, county of Arapahoe and State of Colorado, on the respective dates set forth in the jurats appended at the foot of the testimony of each witness, as hereinbefore set forth.

I also further certify and report that the complainant introduced in evidence in his direct testimony papers and documents, which are hereto annexed and marked Exhibits A, B, C, D, E, F, G, G 1, G 2, G 3, H, I, J, K, L, M, N, O, & P, and that defendant introduced in evidence papers & documents, which are hereto attached and marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, & 32, and that this complainant introduced in evidence on rebuttal papers which are hereto attached and marked Exhibits Q & R, all of which exhibits are referred to their respective folios in the index hereto annexed.

316 And I further certify that I have folioed the direct testimony of complain-t from folio 1 to folio 221, and the defendant's testimony and complainant's testimony in rebuttal from folio 1 to folio 341, in red-ink figures on the left-hand margin thereof.

And that I have observed the stipulations between the parties and their counsel which have been made as to the division of time and the order of taking testimony, as required by the order of the court; and I further certify and report that I am not an attorney, solicitor, or of counsel for either of the parties in this cause or otherwise interested in the event of this suit.

All of which is respectfully submitted.

Dated Sept. 30th, 1882.

JOHN W. WEBSTER, *Examiner.*

Examiner's Fees.

Taking, preparing, & filing complainant's testimony direct, 221 folios " rebuttal, 62 " 283, @ 20	$56 60
14 days' attendance, @ $3.60	42 00
Reporting 2 witnesses to court for refusing to answer	5 00
Filing & attaching 21 exhibits, @ 10	2 10
Administering 19 oaths, @ 10	1 90
Total due	$107 60

Received payment of Joseph Gottlieb, complainant.
JOHN W. WEBSTER, *Examiner.*

Dated Sept. 30th, 1882.

Examiner's Fees.

Taking, preparing, and filing defendant's testimony, 277 folios, @ 20	$55 40
13 days' attendance, @ $3.00	39 00
Filing & attaching 32 exhibits, @ 10	3 20
Administering 20 oaths, @ 10	2 00
Total due	$99 60

Received payment of Charles & Dillon, attorneys for the defendant.
JOHN W. WEBSTER, *Examiner.*

Denver, Sept. 30th, 1882.

317 Defendant's witnesses claimed fees as follows:

Philip Trounstine, 1 day's attendance		$1 50
Marks Amter, 2 " "		3 00
William Trounstine, 2 days' "		3 00
Robert S. Wilson claimed fees in advance of defendant, 2 days' mileage	3 30	
& of complainant, 1 day's mileage	1 65	
	$4 95	4 95
Paid by the respective counsel July 18, 1882, as per receipt, at folio 115 of defendant's testimony.		
Freeman. F Hill, 1 day's attendance		1 50
Joseph Soloman, 1 " "		1 50
John S. M. Foster, in advance, 2 days' attendance	3 00	
" " mileage	30	
		3 30
Paid by def't's att'y, H. C. Dillon, Esq., as per receipt, at folio 171 of def't's test'm'ny.		
John P. Lower, 1 day's attendance		1 50
Augustus G. Potter, 1 day's "		1 50
John J. Maxey, 1 day's attendance		1 50
James U. Marlow, 1 " "		1 50
Fred. Z. Salomon, 1 " "		1 50

JOHN W. WEBSTER, *Examiner.*

Complainant's witness claimed fee as follows:

Ed. A. Reser, 1 day's attendance	1 50

JOHN W. WEBSTER, *Examiner.*

Index to Testimony.

Complainant's witnesses.

G. S. Richards,			testimony	from folio	2	to	4 of compl't's testimony.
Chas. H. Scott,			"	" "	9	"	10
Lewis C. Thatcher,	direct		"	" "	11	"	60
" " "	cross		"	" "	60	"	91
Joseph Gottlieb,	direct		"	" "	92	"	103
" "	cross		"	" "	103	"	125
" "	recalled,	cross	"	" "	126	"	135
Robert R. McCormick,	direct		"	" "	136	"	145
" " "	cross		"	" "	145	"	146
William A. Smith,	direct		"	" "	147	"	171
" " "	cross		"	" "	171	"	172
Edward A. Reser,	direct		"	" "	179	"	186
" " "	cross		"	" "	186	"	188
Chas. H. Scott,	recalled,		"	" "	188	"	192
Joseph Gottlieb,	"	direct	"	" "	195	"	203
" "	"	cross	"	" "	203	"	210
G. S. Richards,	"		"	" "	212	"	214
" " "	"		"	" "	217	"	219

318 COMPLAINANT'S EXHIBITS.

Exhibit	A,	introduced	at folio	4.
"	B,	"	" "	5.
"	C,	"	" "	5.
"	D,	"	" "	6.
"	E,	"	" "	7.
"	F,	"	" "	7.
"	G, 1, 2, 3,	"	" "	8.
"	H,	"	" "	10.
"	I,	"	" "	11.
"	J,	"	" "	173.
"	K,	"	" "	174.
"	L,	"	" "	175.
"	M,	"	" "	211.
"	N, O, & P,	"	" "	215.

Defendant's Witnesses.

Philip Trounstine,	direct,		at	folios	1	to	4, def't's test'y.
" "	cross,		"	"	4	"	25.
Marks Amter,	direct,		"	"	26	"	29.
" "	cross,		"	"	29	"	42.
Lewis C. Thatcher,	direct,		"	"	43	"	69.
" "	cross,		"	"	69	"	73.
William Trounstine,	direct,		"	"	76	"	78.
" "	cross,		"	"	78	"	91.
Robert S. Wilson,	direct,		"	"	91	"	97.
" "	cross,		"	"	97	"	115.
Freeman F. Hill,	direct,		"	"	116	"	118.
" "	cross,		"	"	118	"	123.
Joseph Solomon,	direct,		"	"	123	"	125.
" "	cross,		"	"	125	"	132.
" "	redirect,		"	"	132	"	137.

" " re-cross, " " 137 " 144.
John S. M. Foster, direct, " " 145 " 148.
" " " cross, " " 148 " 169.
" " " redirect, " " 169 " 171.
John P. Lower, direct, " " 172 " 175.
" " cross, " " 175 " 183.
Augustus G. Potter, direct, " " 183 " 185.
" " cross, " " 185 " 191.
John J. Maxey, direct, " " 192 " 194.
" " cross, " " 194 " 201.
James U. Marlow, direct, " " 202 " 204.
" " cross, " " 204 " 207.
" " redirect, " " 207 " 208.
" " re-cross, " " 208 " 209.
Evan G. Owens, direct, " " 209 " 211.
" " cross, " " 211 " 213.
Fred. Z. Salomon, direct, " " 214 " 215.
" " cross, " " 215 " 217.
Owen E. Le Fevre, direct, " " 226 " 230.
Kate P. Mace, " " " 231 " 233.
G. S. Richards, " " " 234 " 236.
William H. Saulsbury, " " 236 " 239.
David W. Hart, " " 241 " 244.
" " " cross, " " 244 " 246.
Leonard H. Eicholtz, direct, " " 251 " 260.
" " " cross, " " 260 " 264.
Robert S. Wilson recalled, direct, " " 264 " 272.
" " " " cross, " " 272 " 275.

319 DEFENDANT'S EXHIBITS.

Exhibit 1, introduced on cross-ex. of pl'ff's witness, folio 61.
" 2, " " " " 127.
" 3, " " ex. of def't's witness, 70.
" 4, " " " 71.
" 5, " " " 219.
" 6 & 7, " " " 220.
" 8, 9, 10, & 11, " " " 233.
" 12, 13, 14, & 15, " " " 256.
" 16, 17, & 18, " " " 239.
" 19, " " " 240.
" 20, " " " 241.
" 21, 22, 23, 24, 25, 26, & 27, " " " 246.
" 28, " at folio 247.
" 29, 30, & 31, " " " 248.
" 32, " " " 253.

Complainant's Witnesses in Rebuttal.

Andrew C. Wright,	direct	examination,	at	folio	278	to	282.
" "	cross	"	"	"	282	"	283.
Samuel Leach,	direct,	"	"	"	283	"	287.
Joseph T. Cornforth,	"	"	"	"	287	"	291.
Carlos Gove,	"	"	"	"	291	"	296.
Andrew C. Haynes,	"	"	"	"	297	"	303.
E. Kinsley Smith,	"	"	"	"	303	"	308.
Chas. H. Scott recalled,	"	"	"	"	309	"	311.
John L. Dailey,	"	"	"	"	312	"	314.
" "	cross	"	"	"	314	"	316.
P. Franklin,	direct	"	"	"	316	"	318.
" "	cross	"	"	"	318	"	326.
John R. Hanna,	direct	"	"	"	327	"	329.
Frank Church,	"	"	"	"	330	"	334.
" "	cross	"	"	"	334	"	335.
George Ruble,	direct	"	"	"	338	"	340.
" "	cross	"	"	"	341.		

Complainant's Exhibits in Rebuttal.

Exhibit Q, introduced at folio 336.
" R, " " " 337.

JOHN W. WEBSTER, *Examiner.*

Denver, Sept. 30th, 1882.

(Endorsed:) No. 228. Testimony taken before John W. Webster, examiner. Filed Sept. 30, 1882. Edward F. Bishop, clerk.

320 And afterwards and on, to wit, the 22nd day of December, A. D. 1882, the same being one of the regular juridical days of the October term, A. D. 1882, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Cause Submitted.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance.

At this day comes the said defendant, by H. C. Dillon, Esq., his solicitor, and this cause, now coming on to be heard, is submitted to the court and by the court taken under advisement.

And afterwards and on, to wit, the 15th day of January, A. D. 1883, the same being one of the regular juridical days of the October term, A. D. 1882, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Leave to Amend Answer.

JOSEPH GOTTLIEB *vs.* LEWIS THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance.

At this day comes the said complainant, by J. W. Horner, Esq., his solicitor, and the said defendant, by H. C. Dillon, Esq., his solicitor, also comes.

And this cause having heretofore come on to be heard, and having been submitted to the court and by the court taken under advisement, and the court being now sufficiently advised in the premises, it is ordered by the court, upon motion of the said defendant and for good and sufficient reasons to the court appearing, that the said defendant have leave to amend his answer herein within ten (10) days from this day as he shall be advised.

321 And afterwards and on, to wit, the 2nd day of March, A. D. 1883, the same being one of the regular juridical days of the October term, A. D. 1882, of said court—present, the Honorable Moses Hallett, district judge, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Exceptions to Amended Answer to Second Amended Bill Sustained. Leave to Amend.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance.

At this day comes the said complainant, by J. A. Bentley, Esq., his solicitor, and the said defendant, by J. Q. Charles, Esq., his solicitor, also comes.

And the exceptions of the said complainant to the amended answer of the said defendant to the second amended bill of complaint herein having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court, that the said exceptions and each thereof be sustained.

And thereupon, on motion of the said defendant, the said complainant now here in open court consenting thereto, it is ordered by the court that the said defendant may again amend his answer to the second amended bill of complaint herein within twenty (20) days from this day as he shall be advised.

And afterwards and on, to wit, the 21st day of March, A. D. 1883, came the said defendant, Lewis C. Thatcher, by Charles & Dillon, his attorneys, and filed in said court and in said cause his second amended answer to the second amended bill heretofore filed herein, and the said answer is in words and figures as follows, to wit:

322 In the Circuit Court of the United States, Sitting in and for the District of Colorado.

JOSEPH GOTTLIEB, Complainant, *vs.* LEWIS C. THATCHER, Defendant. } No. 228. Second Amended Answer.

In chancery.

The second amended answer of the said defendant, Lewis C. Thatcher, to the second amended bill of complaint of the said Joseph Gottlieb, complainant, heretofore and on the twelfth day of May, A. D. 1881, filed in this cause and now filed herein by leave of the court *nunc pro tunc* in lieu of the former answer of this defendant, filed August first, A. D. 1881.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, answering thereunto or to so much and such portion thereof as this defendant is advised is necessary or material for him to make answer unto, *this defendant* by leave of the court first had and obtained, answering, saith :

He admits that at the April term of the district court of Arapahoe county, in the then Territory and now State of Colorado, in the year 1874, one Samuel Kaucher recovered the judgdment mentioned in the said amended complaint against the said Samuel H. Thatcher; that afterwards and on the 18th day of June, A. D. 1874, a transcript of said judgment was filed for record in said county as mentioned in the said complaint.

Admits that execution was never issued thereon until the 29th day of January, A. D. 1878, but this defendant avers that, after the rendition of the said judgment in favor of the said Samuel Kaucher and against the said Samuel H. Thatcher in the district court

323 of Arapahoe county aforesaid, the said Samuel H. Thatcher prayed and perfected an appeal therefrom to the supreme court of the Territory, now State, of Colorado by giving an appeal bond, as required by order of said district court, on or about the 13th day of May, A. D. 1874; that afterwards and in the month of July, A. D. 1875, the judgment of the said district court was affirmed by the supreme court last aforesaid; and thereupon and in the month of July, 1875, the said Samuel H. Thatcher caused said judgment and proceedings therein to be removed by writ of error to the Supreme Court of the United States and caused the said writ of error to be made a supercedeas by the execution of a good and sufficient bond as required by law in such cases made and provided, then and there filed with the clerk of the said Supreme Court of the United States, and that afterwards and in the month of December, 1877, the judgment of the said supreme court of Colorado was duly affirmed by the said Supreme Court of the United States, and that afterwards and as soon as a remittitur could be obtained thereon to

the said district court of Arapahoe county and on the 29th day of January, A. D. 1878, execution was issued upon the said judgment as stated in the said amended complaint.

And this defendant says that by reason of the appeal and writ of error aforesaid operating as a supercedeas as aforesaid the said Samuel Kaucher was prevented from sooner issuing an execution upon his said judgment, and by reason whereof the lien of his said judgment remained in full force and effect upon the lands mentioned in the said complaint.

Admits that at the time of the rendition of the said judgment the said Samuel H. Thatcher was seized in fee simple of the parcels of land mentioned in the said complaint.

324 And this defendant, further answering, says that he knows not and has not been informed, save by the said complainant's bill, and cannot set forth as to his belief or otherwise whether, on the 13th day of November, 1876, or at any other time the said Samuel H. Thatcher was indebted to the complainant or any other person, as mentioned in the said complaint, but denies that on the said day or at any of the times mentioned in the said complaint the said Samuel H. Thatcher was insolvent and had no other property than that mentioned by the said plaintiff out of which his just debts and liabilities could be paid; denies that the said Samuel H. Thatcher, with intent to hinder or delay his creditors or with intent to defraud the plaintiff from collecting his alleged indebtedness, executed a deed for the lands mentioned in the said bill to this defendant, but admits that on or about said date the said Samuel H. Thatcher bargained, sold, and conveyed to this defendant by warranty deed containing full covenants of warranty the lots and parcels of land mentioned in the said complaint, but alleges the truth to be that the said sale and conveyance was in all respects made, executed, and delivered in good faith and for a valuable consideration; denies that the said conveyance was made, executed or delivered without the knowledge of this defendant; denies that it was without consideration, and that it was made with any fraudulent intent whatsoever, and denies that said conveyance was filed for record or recorded, as alleged in the said complaint, without the knowledge of this defendant.

Admits that in payment of the purchase price of said lots and parcels of land he executed and delivered to the said Samuel H. Thatcher his promissory notes, but denies that they were so executed under any pretext or with any intent other than in good faith to purchase the said lots and lands;

325 Denies that said promissory notes were never intended to be paid, and denies that no part thereof has been paid, but, on the contrary, alleges the truth to be that the said promissory notes and all of them have been and now are fully paid.

And this defendant, further answering, says he knows not and has not been informed, save by the said complainant's bill, and cannot set forth the fact as to his belief or otherwise whether the said complainant, on the 25th day of November, 1876, or at any other time, commenced an action in the district court of said Arapahoe county

against the said Samuel H. Thatcher upon the alleged indebtedness mentioned in the said complaint, nor whether such proceedings were had therein; that afterwards, as mentioned in the said complaint, a judgment was obtained against the said Samuel H. Thatcher in favor of the complainant for two thousand one hundred and seventy-one dollars and costs of suit or any other sum, nor whether execution upon said judgment was issued or levied upon the said lands, nor whether the said lands under the said execution were advertised, sold, and bid in by the complainant, nor whether a certificate of sale was issued to the complainant, nor whether a duplicate was recorded, nor whether the said lands were redeemed from such sale, nor whether the sheriff thereafter executed and delivered to the complainant a deed for said premises according to law, nor whether said deed was afterward recorded, as charged in the said complaint.

But this defendant avers that no abstract of the said judgment has ever been filed for record with the clerk and recorder of Arapahoe county, by reason whereof the said judgment never became a lien upon the said lands mentioned in the said complaint nor any part thereof; but this defendant is informed and believes and therefore avers that the said supposed judgment for a large sum than was justly due from him and the said Zella Glenmore to the
326 said complainant against the said Samuel H. Thatcher and at the time of the beginning of this suit was fully paid—that is to say, the sole and only cause of action upon which the said judgment last aforesaid was obtained was for money loaned by the said complainant to one Zella Glenmore on or about the 18th day of November, A. D. 1875, at Denver, in the said county of Arapahoe, and evidenced by a promissory note bearing date on or about the date last aforesaid for the sum of twenty-seven hundred dollars and payable one year after the date thereof, with interest, at the rate of five per cent. per month, payable monthly; that the said Samuel H. Thatcher was a surety upon the said promissory note and received no part of the consideration thereof and derived no benefit whatever therefrom; that said promissory note was secured by a chattel mortgage from the said Zella Glenmore to the complainant, dated October 31st, A. D. 1876, of a large amount of household furniture and other personal property of the value of six thousand dollars, and also by a deed of trust of even date with said note from the said Samuel H. Thatcher to David H. Moffat, Jr., trustee, for the use and benefit of the said complainant, containing three hundred and twenty acres of land in the county of Douglas, in said State, of the value of three thousand dollars, and being the northwest ($\frac{1}{4}$) one-quarter of section (33) thirty-three, township (7) seven south, of range (69) sixty-nine west, and the southwest ($\frac{1}{4}$) one-quarter section 28, township (7) seven south, of range (69) sixty-nine west, whereby the payment of the said promissory note was amply secured, and that the same was not due or payable at the time of the execution and delivery of the said warranty deed.

And, further answering upon like information and belief, this defendant avers that the current rate of interest in the said city of

Denver at the time of the execution of the said promissory note did not exceed one and one-half per cent. per month, and that
327 the said complainant took advantage of said Zella Glenmore and of the said Samuel H. Thatcher and extorted from them an unreasonable, unjust, inequitable, and oppressive rate of interest upon the said note; that the said Zella Glenmore, on or about the 18th day of December, 1875, and on or about the 18th day of each and every month thereafter until the 18th day of November, 1876, paid to the complainant (135) one hundred and thirty-five dollars per month as interest on said loan, and on or about the said 18th day of November, A. D. 1876, paid to the said complainant the sum of ($50) fifty dollars, altogether amounting to the sum of ($1,535.00) fifteen hundred and thirty-five dollars.

And defendant is advised and therefore avers that upon a just and true account being had and taken in equity the said complainant should be compelled to credit upon said judgment as an overpayment of interest the sum of ($1,049) ten hundred and forty-nine dollars extorted from the said Zella Glenmore as aforesaid.

And, further answering upon like information and belief, the defendant avers that before the rendition of the said judgment in favor of the said complainant and against the said Samuel H. Thatcher and on the 17th day of November, A. D. 1876, the said complainant seized and took possession of all the goods and chattels mentioned in the said chattel mortgage as the property of the said Zella Glenmore for an alleged default in the payment of the said promissory note and caused the whole thereof to be struck off, sold, and delivered, on or about the 27th day of November, A. D. 1876, to himself for the sum of (2,000) two thousand dollars, and thereby, as this defendant is advised, extinguished the said debt and released the said Glenmore and Samuel H. Thatcher forever therefrom. Defendant further says that at the time the said complainant so seized upon and *to* took into his possession the said goods and chattels they were reasonably worth the sum of six thousand dollars.

328 Defendant further says upon like information and belief that before the rendition of the said last-mentioned judgment and on or about the 30th day of December, A. D. 1876, the said complainant caused the said lands in Douglas county so conveyed in trust to him as aforesaid as additional security for the payment of said promissory note to be advertized and sold under the said deed of trust, and bid in the same in his own name for the sum of three hundred and twenty dollars, and afterwards and on the 17th Feb'uary, A. D. 1877, received a conveyance to himself of the said lands and still holds and claims to be the owner and in possession thereof; and this defendant says that at the time of the said last-mentioned sale the said lands were reasonably worth the sum of three thousand dollars, but that the said sale was so secretly and fraudulently conducted, without any notice whatever to the said Samuel H. Thatcher, that thereby the said complainant was enabled to bid in and did bid in the same for the said sum of (320) three hundred and twenty dollars. Defendant further avers upon like information and belief that, although the said indebtedness of the said

Zella Glenmore and the said Samuel H. Thatcher was wholly paid and satisfied as aforesaid, the said complainant afterwards and on or about the 23d day of July, A. D. 1877, fraudulently intending to cheat and defraud the said Samuel H. Thatcher and said Zella Glenmore and fraudulently intending thereby to secure an unjust and inequitable advantage as against this defendant, concealed the knowledge of the said payments and pretended chattel-mortgage sale from the knowledge of the said district court, and pressed his said cause for trial at a time when the counsel of the said Samuel H. Thatcher was intoxicated and unable to defend the said Samuel H. Thatcher, and thereby and by the complainant's own perjury obtained his said supposed judgment for the said sum of
329 twenty-one hundred and seventy-one dollars and costs, and not otherwise.

And this defendant further says upon like information and belief that at the time of the commencement of the said action in attachment, to wit, on the 26th November, 1876, by the complainant against the said Samuel H. Thatcher, he, the said Samuel H. Thatcher, was possessed, among other things, of a certain promissory note, signed by one Anna C. McCormick and Isaac L. McCormick, for the sum of thirteen hundred and fifty dollars, secured by a deed of trust to David H. Moffat, Jr., for the use of the said Samuel H. Thatcher upon certain lands in the said county of Arapahoe, to wit, commencing at the southeast corner of the northeast quarter of section twenty-five, in township three south, of range 68 west, and running thence north ten chains, thence west twenty chains, thence south ten chains, thence east twenty chains to the place of beginning, and containing twenty acres of land, which said promissory note was then of the value of thirteen hundred and fifty dollars.

And this defendant further says that after the rendition of the said judgment against the said Samuel H. Thatcher and on the 4th day of September, A. D. 1877, the complainant sued out from said district court an alias writ of execution thereon, under and by virtue of which the sheriff of said county was ordered to levy upon the lands and tenements, goods and chattels, of the said Samuel H. Thatcher, in said county of Arapahoe; that pursuant to the said alias writ of execution the said sheriff did, on the 7th day of September, A. D. 1877, levy upon and take into his possession the said last-mentioned promissory note, and thereupon advertised the same for sale at public auction, but the said sale was so secretly conducted that the said Samuel H. Thatcher had no notice whatever of either the levy upon the said promissory note nor of the sale which took place thereunder, so that the complainant was afterwards and on the 19th day of September, A. D. 1877, enabled to bid without
330 opposition at the execution sale, and did bid in the said promissory note for the sum of eighty dollars, and after having thus acquired the ownership of the same caused the said deed of trust securing the same to be foreclosed and the land therein mentioned to be sold on or about the 10th day of January, A. D. 1879; that at the time of the said foreclosure and sale the said promissory note, with the accrued interest thereon, was fully worth

the sum of sixteen hundred dollars, and that on said last-mentioned day the said Joseph Gottlieb became the purchaser of the property mentioned in the said deed of trust, and bid therefor the sum of sixteen hundred dollars, and afterwards and on the same day received from the said David H. Moffatt, trustee, his deed of conveyance of all the said last-mentioned lands and still claims to be the owner in fee thereof.

But this defendant expressly avers and states the fact to be that at the date of the said sale of the said lands so bid in by the said complainant as aforesaid they were and still are reasonably worth the sum of more than ten thousand dollars, no part of which sum has ever been applied by the said complainant in satisfaction of his said supposed judgment, but which in equity and good conscience ought to be so applied.

And so the defendant says that at the time of the filing of the complainant's original bill of complaint herein the said Joseph Gottlieb was not in equity or good conscience a judgment creditor to him, the said Samuel H. Thatcher, and had and has in equity and good conscience no right to the relief prayed for in his said bill, but, on the contrary, upon a just and true account being had and taken in equity the said Joseph Gottlieb would have been indebted to the estate of the said Samuel H. Thatcher.

This defendant, further answering, admits that on or about the 29th day of January, A. D. 1878, an execution was issued
331 upon the said Kaucher judgment against the said Samuel H. Thatcher; that said execution was levied upon the lots and lands mentioned in the said complaint, and pursuant to the said levy said lands were sold and bid in by this defendant, but denies that the same were sold or bid in at the instance or request of the said Samuel H. Thatcher; denies that the amount so bid for said lots and lands was paid to the sheriff of said county out of the moneys of the said Samuel H. Thatcher, and, on the contrary, avers that the moneys so paid and bid were then and there the moneys of this defendant.

Denies that the said sale was procured by the defendant and the said Samuel H. Thatcher for the purpose of hindering, defrauding, or delaying any of the creditors of the said Samuel H. Thatcher, and, on the contrary, avers that the same was bid in and paid for by this defendant for the sole and only purpose of relieving the said lands from the lien of the said judgment in favor of the said Samuel Kaucher.

Denies that no consideration or moneys of this defendant were ever paid or intended to be paid for or on account of said purchase and sale; denies that the same was made or had with the intent or for the purpose of defrauding the creditors of the said Samuel H. Thatcher.

Admits that the certificate of sale of the said premises was, according to law, executed and delivered to this defendant by the sheriff and a duplicate thereof recorded as alleged in said complaint, but denies that said certificate was made or recorded in furtherance of any design whatever or with any intention to hinder, delay, or

defraud any of the creditors of the said Samuel H. Thatcher, and further denies that the sale was made at the instance or request of the said Samuel H. Thatcher.

Admits that afterwards a deed of said premises was made, executed, and delivered by the sheriff of Arapahoe county to the
332 defendant, but denies that the same was procured or caused to be executed and delivered at the instance and request of the said Samuel H. Thatcher.

And, further answering, this defendant denies that during all of said period the said Samuel H. Thatcher was insolvent.

Denies that subsequent to the sale and conveyance of the said lots and lands to this defendant, as mentioned in the said complaint, the said Samuel H. Thatcher held or retained any interest, right, or title whatever in and to the said land and lots or any part thereof.

And, further answering the said complaint, this defendant denies that in purchasing the said lots and land from the said Samuel H. Thatcher, or in bidding the same in at the said sheriff's sale under the said Kaucher judgment, he acted with any intent to aid or abet the said Samuel H. Thatcher in any intent or purpose which he may have had (and this defendant denies that he had any such intent or purpose) to hinder, delay, or defraud his creditors.

Denies that in any way or manner whatsoever he has co-operated with the said Samuel H. Thatcher in any intent or purpose upon his part to hinder, delay, or defraud any of his creditors.

This defendant admits that he claims to have and does have the legal title in fee simple to the said parcel of land, and that he acquired his title to the same under and by virtue of said warranty deed and sheriff's deed last mentioned, and further avers that ever since the purchase thereof as aforesaid he has been in the quiet, undisturbed, exclusive, and undisputed possession thereof in good faith, and has paid all taxes which have been assessed against the same.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill
333 charged; without this, that there is any other matter, cause, or thing in said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, traversed, avoided, and denied, is true to the knowledge and belief of this defendant; all of which matters and things the defendant is willing to aver, maintain, and prove as this honorable court may direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. Q. CHARLES,
HENRY C. DILLON,
Solicitors for Defendant.

(Indorsed:) No. 228. In the circuit court of the United States in and for the district of Colorado. Joseph Gottlieb, complainant, *vs.* Lewis C. Thatcher, defendant. Second amended answer. Filed Mar. 21, 1883. Edward F. Bishop. Charles & Dillon, def't's sol'c'r-.

And afterwards and on, to wit, the 28th day of June, A. D. 1883, came again the said plaintiff, by his attorneys aforesaid, and filed in said court and in said cause his replication to second amended answer to second amended bill heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication to Second Amended Answer to Second Amended Bill.

In the Circuit Court of the United States, District of Colorado.

JOSEPH GOTTLIEB, Complainant,
vs.
LEWIS C. THATCHER, Defendant.

The replication of Joseph Gottlieb, complainant, to the second amended answer of Lewis C. Thatcher, defendant.

334 This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the amended answer of the said defendant, for replication thereto says that he does and will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

Dated June 28, 1883.

J. W. HORNER,
J. A. BENTLEY,
Complainant's Solicitors.

(Indorsed:) 228. Chancery. In the circuit court of the United States, district of Colorado. Joseph Gottlieb *vs.* Lewis C. Thatcher. Replication. Bentley & Vaile, complainant's solicitors. Filed Jun-28, 1883. Edward F. Bishop, clerk.

And afterwards and on, to wit, the 3rd day of September, A. D. 1883, at chambers, before the Honorable Moses Hallett, district judge, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Defendant to Produce Zella Glenmore for Examination.

JOSEPH GOTTLIEB
vs.
LEWIS C. THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance.

And now comes the complainant, by his solicitor, J. A. Bentley, and moves the court for a rule upon the defendant to produce the witness Zella Glenmore, examined in chief before examiner, W. H.

Buck, on the 12th of September, 1882, at the instance of the defendant, for cross-examination.

335 Now, after hearing Mr. Dillon for the defendant, it is ordered that the defendant produce the said witness before an examiner for cross-examination within thirty days, or within that time inform the complainant's counsel of her whereabouts, to the end that he may, if he desires, cross-examine said witness or show cause why said witness is not produced.

And afterwards and on, to wit, the 4th day of December, A. D. 1886, there *were* opened, published, and filed in said court and in said cause the *the* deposition of J. Cook, Jr., G. W. Clayton, and William B. Berger on behalf of defendant.

And the said deposition is in words and figures as follows, to wit:

Deposition Cook et al., Behalf Defendant.

The deposition of J. Cook, Jr., G. W. Clayton, and William B. Berger, of the county of Arapahoe and State of Colorado, witnesses of lawful age, produced, sworn, and examined upon their corporal oath on the 30th day of December, A. D. 1884, the said J. Cook, Jr., being examined at his office, number 293 16th street, in the city of Denver; the said G. W. Clayton being examined at his office, room 58, in the Cheesman block, and the said William B. Berger being examined at his place of business, the Colorado National bank, all in the city of Denver, county and State aforesaid, by me, Clarence D. Van Wie, a notary public duly appointed according to the terms of the foregoing stipulation hereto attached for the examination of the said witnesses, J. Cook, Jr., G. W. Clayton, and William B. Berger, in behalf of the defendant in a certain suit now pending in the circuit court of the United States for the district of Colorado, wherein J. Gottlieb is plaintiff and Lewis C. Thatcher is defendant.

John A. Bentley, Esq., appearing in each case for the plain-
336 tiff and Henry C. Dillon, Esq., appearing on behalf of the defendant.

The said witnesses, being first severally sworn by me to testify the truth in relation to the matters in controversy so far as they should be interrogated concerning the same, testified as follows:

JOHN COOK, Jr., being first duly sworn, testified as follows on behalf of the defendant:

Q. State name, age, residence, and occupation.
A. J. Cook, Jr.; age, 36; real-estate broker.
Q. How long have you lived in Denver?
A. Eleven years and over.
Q. How long have you been engaged in real-estate business?
A. All this time and before this.
Q. Are you acquainted with following-described real estate situate in the county of Arapahoe and State of Colorado, to wit, commencing

at the southeast corner of the northeast quarter of sec. twenty-five township 3 S., R. 68 west, running thence north 10 chs., thence west 20 chs., thence south 10 chs., thence east 20 chs. to the place of beginning, containing 20 acres and being the same tract of land marked J. Gottlieb on Rolandet's map of the city of Denver, 1881?

A. I am.

Q. Have you been acquainted with the values of real estate in that vicinity since the beginning of the year 1881?

Ans. I have.

Q. Are you acquainted with the value now?

Ans. I am.

Q. Please state the value of the said tract of land per acre or as a whole at the present time.

Ans. Well, I should say about 3 or 4 hundred dollars an acre now.

Q. Has there been any substantial change in its value since October, '81?

337 Ans. There has.

Q. You may state what that change is.

Ans. It was then worth from $125 to $150 per acre.

Q. What was it worth on the 10th of June, 1879?

Ans. Well, I should say it was worth one hundred dollars an acre at that time.

(The plaintiff objects to all the testimony given by this witness and to each question separately, because the same is irrelevant and immaterial.)

J. COOK, JR.

Subscribed and sworn to before me this 30th day of December, A. D. 1884.

[SEAL.] CLARENCE D. VAN WIE,
Notary Public.

This witness demanded his fees, which were then and there paid by the defendant's attorney.

CLARENCE D. VAN WIE,
Notary Public.

GEORGE W. CLAYTON, being first duly sworn, testified on the part of the defendants as follows:

Q. How long have you lived in the city of Denver, Mr. Clayton?

Ans. I have been here over 20 y'rs, sir.

Q. During that time what experience have you had in buying and selling real estate?

Ans. I have always done more or less buying and selling of it, more especially for the last ten or fifteen years.

Q. Are you acquainted with the values of real estate in sec. 25, T. 3 S., R. 68 west, Arapahoe Co., Colo.?

Ans. I can't say that I am acquainted with the values there; don't know of any sold there lately; I own real estate there and have a value on that.

Q. Your attention is called to a tract of land of 20 acres
338 marked J. Gottlieb on Rolandet's map of the city of Denver, '81, lying in the N. E. ¼ of said sec. 25, and you are requested to state its value per acre or as a whole at the present time according to the best of your knowledge, information, and belief.

Ans. I suppose that land is worth about $325 per acre.

Q. At what price per acre are lands now selling or valued in Berger's addition to city of Denver?

Ans. I have seen the sales quoted in that section at $800 an acre.

(The plaintiff's counsel objects to the testimony of the witness Clayton and to each question separately because the same is irrelevant, immaterial, and incompetent.)

Cross-examination:

X Q. If you can state please do so whether the sales referred to in Berger's addition were of large or small tracts and about how large.

Ans. They were in lots. I think this quotation I allude to was a block, which would be about three or four acres, probably.

Redirect ex.:

Q. What was that Gottlieb tract of land worth per acre in Jan., 1879?

Ans. I should say not over $250 per acre at that time.

(The complainant repeats his above objection to the last question.)

G. W. CLAYTON.

Subscribed and sworn to before me this 30th day of December, A. D. 1884.

[SEAL.] CLARENCE D. VAN WIE,
Notary Public.

WILLIAM B. BERGER, being first duly sworn, testified on the part of the defendants as follows:

Q. How long have you lived in city of Denver?
339 Ans. About fifteen years.

Q. During that time what experience have you had in buying and selling real estate?

Ans. I have done considerable.

Q. Are you the owner of Berger's addition to the city of Denver?

Ans. Of considerable of it I am.

Q. Have you been selling lots in that addition since Jan., 1879?

Ans. Yes.

Q. Are you acquainted with the Clayton tract of land and with the Episcopal church tract of land in sec. 25, T. 3 S., R. 68 west, Arapahoe Co., Colo., as platted on Rolandet's map of the city of Denver, 1881?

Ans. Yes; I *do*.

Q. Your attention is called to the tract of 20 acres on said map marked J. Gottlieb and you are asked to state the present value of it per acre or as a whole to the best of your knowledge, information, and belief at the present time.

Ans. I should say about $300 per acre. The last sale of lots in my addition were $100 per lot, being ten lots to the acre. There have been sales higher than this within a year or two. I should say $300 an acre was low enough. I don't care to sell lots in my addition for less than $100 apiece.

Q. What was that tract of land worth per acre in Jan., 1879?

Ans. At that time the Leadville boom would give it an increased value at that time, but to the fact that this land is under the English ditch gives it an increased value now that fully balances the effect of the boom in 1879. I should say that the value now and then is about the same, $300 per acre.

(Plaintiff's counsel objects to the testimony of the witness Berger and to each question separately for the reason that the same is irrelevant, immaterial, and incompetent.)

WILLIAM B. BERGER.

340 Subscribed and sworn to before me this 30th day of December, A. D. 1884.

[SEAL.] CLARENCE D. VAN WIE,
Notary Public.

I, Clarence D. Van Wie, of the county of Arapahoe and State of Colorado, a notary public duly appointed to take the depositions of the said J. Cook, Jr., G. W. Clayton, and William B. Berger, the witnesses whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said J. Cook, Jr., G. W. Clayton, and William B. Berger as witnesses in the said suit between the said J. Gottlieb as plaintiff and Lewis C. Thatcher as defendant they were duly sworn by me to testify the truth in relation to the matters in controversy between the said parties so far as they should be interrogated concerning the same; that the said depositions were taken by me at the several places of business of the aforesaid witnesses in the city of Denver, county of Arapahoe and State of Colorado, on the 30th day of December, A. D. 1884, and that after the said depositions were taken by me as aforesaid the interrogatories and the answers thereto as written down were read over to the said witnesses, J. Cook, Jr., G. W. Clayton, and William B. Berger, and the same *was* thereupon signed by them at the places and on the day and year last aforesaid.

[SEAL.] CLARENCE D. VAN WIE,
Notary Public.

Notarial fees, 9 folios at 15c. per f	$1 35
Oaths and certificate	1 00
	$2 35

(Indorsed:) 228. United States circuit court, district Colorado. J. Gottlieb *vs.* Lewis C. Thatcher. Depositions of J. Cook, Jr., G. W. Clayton, Wm. B. Berger for defendant. Opened, published and filed Dec. 4, 1886. Edward F. Bishop, clerk. C. D. Van Wie, notary public.

341 And afterwards and on, to wit, the 10th day of December A. D. 1886, the same being one of the regular juridical days of the November term, A. D. 1886, of said court—present, the Honorable David J. Brewer, circuit judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Motion to Suppress Deposition of Glenmore Granted.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance and for Other Relief.

At this day comes the said complainant, by J. A. Bentley, Esq., his solicitor, and the said defendant, by H. C. Dillon, Esq., his solicitor, also comes.

And the motion of the said complainant to suppress the deposition of one Zella Glenmore, a witness taken herein on behalf of the said defendant, coming on now to be heard, is argued by counsel, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be sustained as is in the said motion alleged to be immaterial.

And afterwards and on, to wit, the 4th day of May, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said court—present, the Honorable David J. Brewer, circuit judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Defendant to Take Testimony by September 1st, 1887.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery. Bill to Set Aside a Conveyance.

342 At this day comes the said complainant, by J. W. Horner, Esq., his solicitor, and the said defendant, by H. C. Dillon, Esq., his solicitor, also comes.

And thereupon, on motion of the said defendant and for good and sufficient reasons to the court appearing, it is ordered by the court that the said defendant close his proof herein by or before the first day of September, A. D. 1887.

And afterwards and on, to wit, the 28th day of December, A. D. 1887, came A. W. Brazee, Esq., and examiner in chancery of said

court, and filed in said court and in said cause his report of the testimony taken before him as such examiner.

And the said report is in words and figures as follows, to wit:

Examiner's Report of Testimony Behalf Defendant.

343 United States Circuit Court for the District of Colorado, Sitting at Denver.

JOSEPH GOTTLIEB, Complainant,
vs.
LEWIS C. THATCHER, Defendant. } In Chancery.

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UNITED STATES OF AMERICA,
District of Colorado, } *ss:*

Caption.

Be it remembered that on the 24th day of October, in the year of our Lord one thousand eight hundred and eighty-seven, voluntarily for the purpose of taking evidence on behalf of defendant, the party to the cause herein mentioned appeared before me, Andrew W. Brazee, an examiner in chancery of the circuit court of the United States for the district of Colorado, at my office, 1540 Champa street, Denver, Colorado, to wit, the complainant in said cause, by J. A. Bentley, Esqr., his solicitor, and the defendant, by Henry C. Dillon, Esqr., his solicitor.

And on this day and on succeeding days to which the taking of evidence herein was successively adjourned, as hereinafter
344 stated, or on some such days, came before me also David H. Moffatt, of the apparent age of forty-eight years; Henry L. Denison, of the apparent age of forty-one years; George W. Clayton, of the apparent age of fifty-three years; Philip Trounstine, of the apparent age of forty-five years; Victor A. Elliott, of the apparent age of forty-eight years; Vincent D. Markham, of the ap-

parent age of fifty-six years; William A. Smith, of the apparent age of forty-eight years, & Henry C. Dillon, of the apparent age of forty-one years, to testify and the truth to say as witnesses on the part and behalf of the defendant in a certain suit or matter of controversy pending and undetermined in the circuit court of the United States for the district of Colorado, at Denver, in said district, wherein Joseph Gottlieb is complainant and Lewis C. Thatcher is defendant.

And the said witnesses, having by me been first duly cautioned and sworn, according to law, respectively, to testify the truth, the whole truth, and nothing but the truth in the suit and matter of controversy aforesaid, were severally examined before me on oral interrogatories propounded to them respectively by counsel, as in their several depositions following appears—that is to say:

OCTOBER 24TH, 1887.

The complainant appeared by J. A. Bentley, Esq., his solicitor, and the defendant appeared by Henry C. Dillon, Esq., his solicitor; whereupon the following proceedings were had:

Deposition of DAVID H. MOFFATT, a witness produced on behalf of the defendant and duly sworn according to law, who, in answer to oral interrogatories, testified as follows:

Direct examination by Mr. H. C. DILLON:

Q. What is your name, age, place of residence, and occupation?
A. David H. Moffat; 48; Denver; a banker.

Q. Are you the trustee mentioned in a certain deed of trust
345 from Isaac L. McCormick & Anna McCormick to David H. Moffatt, trustee, for the use of Samuel H. Thatcher, dated January 1st, A. D. 1874, and marked "Exhibit 16" in this case?
A. I am.

Q. Were you present at the trustee's sale made pursuant to said deed of trust mentioned in a certain trustee's deed from David H. Moffat, trustee, to Joseph Gottlieb, dated January 10th, A. D. 1879, and marked "Exhibit 17" in this case?

Mr. Bentley objected as incompetent & immaterial.

A. I do not remember the sale, but I presume I was present at it.

Q. State, to the best of your recollection and belief, whether Joseph Gottlieb, the complainant, was also present and whether he bid at that sale.

Same objection as above.

A. I do not recollect who was present. I do not remember.

Q. State what amount of money, if any, the complainant, Joseph Gottlieb, bid at that sale, & you may refresh your recollection from your own deed, if you desire.

Objected to for the above reason & because it is a matter of record.

A. From looking at the deed I should say he paid $1,600.00.

Q. Was that the highest and best sum bid therefor according to your recollection and belief?

Same objection as above.

A. It must have been or I would not have made the release deed.

Q. Do you know whether or not Mr. Gottlieb indorsed that sum of money upon the promissory note of Anna C. & Isaac L. McCormick?

Same objection.

A. I do not.

Q. Are you also the same David H. Moffatt, Jr., mentioned as trustee in a certain other deed of trust dated Nov'r 8, 1875, between
346 Samuel H. Thatcher and yourself for the use and benefit of Joseph Gotlieb, marked "Exhibit 19" in this case?

A. I am.

Q. Were you present at the trustee's sale mentioned in a certain trustee's deed from David H. Moffatt, Jr., trustee, to Joseph Gotlieb, dated February 17th, 1877, and marked "Defendant's Exhibit 20" in this case?

Objected to as incompetent and immaterial & a matter of record.

A. I presume I was.

Q. State to the best of your knowledge, information, and belief whether Joseph Gotlieb, the complainant, was present at that sale and how much, if anything, he paid for the property in said trustee's deed mentioned.

Same objection.

A. I do not remember whether he was present or not.

Q. There is the recitation, Mr. Moffatt (handing him record).

A. $320; that must have been the amount paid, otherwise I should not have made the release deed.

Q. The question is as to your best recollection as to whether he bid it.

A. I could not say as to that. It is so long ago I do not remember. I had so much of that sort of business.

Q. Do you know whether or not that amount of money or any part of it was indorsed by Mr. Gotlieb upon the promissory note mentioned in the said deed of trust, "Exhibit 19"?

Objected to as immaterial.

A. I do not.

Mr. Bentley waived cross-examination.

DAVID H. MOFFAT.

Subscribed and sworn to before me this 25th day of October, 1887

ANDREW W. BRAZEE,
Examiner in Chancery.

347 And thereupon further proceedings in this matter were adjourned to October 26th inst., at two o'clock p. m.

October 26th, 1887, the parties appeared as on the 24th instant, whereupon the following proceedings in this matter were had:

Deposition of HENRY L. DENISON, a witness produced on the part of the defendant, who, being duly sworn according to law and interrogated orally, testified as follows:

Direct examination by Mr. H. C. DILLON:

Q. What is your name, age, place of residence, & occupation?
Answer. Henry L. Denison; 41; Denver; stenographer.
Q. Were you the official court stenographer of the district court of Arapahoe county, in the State of Colorado, in the month of July, 1877?
Ans. Yes, sir.
Q. Did you take the testimony of the witnesses in a certain case then pending in that court wherein Joseph Gotlieb was plaintiff & Samuel H. Thatcher was defendant, No*d.* 3544 on the docket of that court?
Ans. Yes, sir.
Q. Did you hear the said plaintiff, Joseph Gotlieb, testify upon the trial of that cause?
Ans. I did.
Q. Did you take his testimony in short-hand at the time?
Ans. Yes, sir; I did.
Q. Have you since extended the said short-hand notes into long-hand & have you them now in your possession?
Ans. I have. I obtained the short-hand notes from the clerk or his deputy & made a transcript.
Q. Does that transcript correctly contain the evidence which the said Joseph Gotlieb gave at that time?
348 Ans. It does.
Q. You will please state all the evidence which the said Joseph Gotlieb gave at that time.
Ans. There is the manuscript. It is my work and was compared with my notes. The date appears, the case, & the names of the witnesses.

It is agreed by counsel that the said transcript may be attached to the deposition of this witness, the same as if read in evidence by him. It goes in so far as the testimony of Joseph Gotlieb is concerned & not as to any other witness; hereto annexed & marked Exhibit 1.

Q. Did you on the trial of the same cause take down in short-hand the testimony given by the said Joseph Gottlieb upon the trial of the traverse of attachment in the same case?
Ans. Yes, sir; I think it was a day later.
Q. No; the day before, July 20th, & the other was July 21st?
Ans. Yes, sir.

Q. And have you extended your short-hand notes of that examination?

Ans. Yes, sir.

Q. And have you here a correct report of the testimony given by the said Joseph Gotlieb on the trial of that traverse in cross-examination?

Ans. Yes, sir; I believe it is.

Q. You will please read in evidence the testimony which the said Joseph Gotlieb gave at that time on cross-examination.

It is agreed by counsel for the respective parties that the notes of said examination as extended by the witness may be attached to this his deposition, the same as if fully read in evidence by him, it being the offer of the defendant's counsel to read in evidence all the testimony given by the said Joseph Gotlieb on the trial of the merits in that case & the testimony given by him on cross-
349 examination in the trial of the traverse of attachment in said action; hereto annexed & marked Exhibit 1, as above.

Cross-examination by J. A. BENTLEY:

The plaintiff's counsel as the cross-examination of the witness offers the notes of the testimony taken upon direct examination in the trial of the traverse, contained in said Exhibit 1. Defendant objects to this offer; incompetent and not proper examination.

Q. Did you on the trial of the traverse of the attachment take the testimony of John Cooke?

Ans. Yes, sir; I did.

Q. And of Wilbur C. Lothrop?

Ans. I took his as well.

As a part of the cross-examination it is agreed that the notes taken by witness of the witnesses Cook and Lothrop on the trial of the traverse of attachment are correct.

Mr. Bentley also offered as part of the cross-examination the notes of testimony taken upon the traverse of the witnesses Cook and Lothrop.

Defendant's counsel objected for the reason that they are not proper cross-examination and incompetent, irrelevant, & immaterial. Offer as to Cook & Lothrop's testimony withdrawn.

HENRY L. DENISON.

Subscribed and sworn to before me this 27th day of October, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

350 EXHIBIT 1, A. W. B.

Might have been this—it might have been another; about that time; I can't say definitely as to that date. Q. What is the best of your recollection on that subject? A. The best of my recollection is that Mr. Thatcher filed the papers and filed a release deed at the same time. Q. Were they both withdrawn on the same day by him? A. Yes, sir.

Stricken out before being offered in ev. A. W. B.

A certain paper referred to by witness, marked Exhibit "A," was by the court excluded from evidence. It was as follows: "Lot 27, B. 1, 78; lot 4, 165, E. D., & N. E. ¼ & the S. W. ¼ sec. 24, & the E. ½ of S. E. ¼ of sec. 26, t'p one S., & S. E. ¼ sec. 24, t'p 3 S., R. 67 W."

JOSEPH GOTTLIEB sworn:

Q. You are plaintiff?

A. Yes, sir.

—. Did you have any conversation with Thatcher about this date, November 13 or 18 last, about this conveyance to his brother?

A. I did.

Q. When did you have it?

A. I had a conversation with him on the evening of the 17th, I think, of November.

Q. What did he say about this conveyance?

A. I asked him why he sold this property just on the day that the note became due. He said he had a good chance to sell and he sold.

Q. What else did he say? Did he say anything about what other property he had?

A. Yes; I had a talk with him previous to that, and he described to me all the real estate he has and described just what he has in these deeds and no more. He said he had no more.

Q. How near before the 18th of November was that conversation?

A. That was several months prior to that.

Q. Did you have any conversation after this as to whether he had or had not conveyed at the time you had this conversation with him, the day this note matured? What did he say about the conveyance of the property?

A. I accused him of trying to swindle; told him he sold the property. He says, I could do nothing. I said, How can you pay
351 me when you sold all your property? You have sold this property to swindle me; you sold all your property. He said he sold it because he had a good chance to sell; that is the only opportunity he had to sell.

Cross-examined:

—. For this same debt didn't you have a mortgage on this property—a deed of trust or something?

A. Yes.

Q. Was this some of the same property, this that you speak of his selling?

A. Well, the property that I had a deed of trust on, he didn't sell that; that, you know, I had a deed of trust on; I sold that; I had my trustee sell it and I bought.

Q. Was that land or lots or both?

A. That was land in Douglas.

Q. So you bought the land that was embraced in the deed of trust?

A. Yes.

Q. Did you have a mortgage on anything else to secure that sum?

A. I had a chattel mortgage on furniture.

(Objected to.)

A. Did you sell that?

(No answer.)

Plaintiff rests.

Mr. Browne asks the court to instruct the jury that the sale of a man's property wholly on credit, he being in debt at the time, is *per se* fraudulent by itself.

In the District Court of Arapahoe County.

GOTTLIEB *vs.* S. H. THATCHER. } No. 3544.

Transcript of Notes. Filed July 21st, 1877.

Jury empanneled and sworn.

JOSEPH GOTTLIEB sworn:

(Handed paper.)

Q. Do you know that?

A. I do.

Q. When was that note delivered to you?

A. The 18th of November, 1876 (5).

Plaintiff's counsel offers note in evidence.

Mr. BROWNE: I may as well show what payments were made on it. (Reads note to jury:)

"On or before one year * * * $2,700, * * * in-
352 terest at the rate of 5 per cent. per month from date, * * * interest due and payable.

ZELLA GLENMORE.
SAM. H. THATCHER."

Q. What payments, if any, have been made on this note and when?

A. Payment on this note—I received from Zella Glenmore six months' interest and one hundred dollars besides on the seventh month.

Q. So that from the date of the note, being the first six months, and the hundred on the seventh month—you say the first six months' interest and one hundred dollars on the seventh month's interest—when was there anything else paid?

A. Then I sold furniture, realized $1,519.43, in the month of December, 1876.

Q. What day of that month, December?

A. It is the fifth or the sixth; I think it is the sixth, 1876.

Q. Was there any further payment on the note?

A. Yes, sir; there is a credit here on this note from D. H. Moffatt, trustee, sale of land in Douglas county, $300, less taxes. Well, the land was sold for that; the taxes amounted to $41.90, and five dollars for advertising the sale, so I realized this amount that Moffatt endorsed, less $41.90 and five dollars; it would be $46.90.

Q. At what date was that?

A. It was in the month of February; I don't recollect the date exactly.

Q. Say, along the tenth?

A. Well, about that time.

Q. Is that all that has been paid on the note?

A. That is all that has been paid on this note.

Cross-examined by Mr. MARKHAM:

Q. This note, for what was it given?

A. For cash advanced.

Q. Who was it advanced to, which one of these parties?

(Objected to as immaterial.)

Q. At the time of this note for $2,700, if that was the amount advanced, this was $2,700. Was there any other note given for the same money in connection with this $2,700?

A. There was another note given the same day for $300.

Q. What was that given for?

A. Zella Glenmore gave it individually; nobody else.

(Objection to any introduction of proof about that note.)

Q. Did that three hundred have anything to do with this $2,700?

353 A. I don't know it had anything to do with it; it was to be paid to me; that is all I know.

Q. Was that for the same consideration that is in this note? What was that $300 note given for?

A. It was given to me in order to consummate a trade between Rhoda Devins and Zella Glenmore.

Q. Wasn't that three-hundred-dollar note given for extra interest on this $2,700 note?

A. No, sir; it was given to me in consideration — the trade between Rhoda Devins and Zella Glenmore.

Q. I want to know whether this $300 was given or was not given for this identical money—interest on that $2,700.

A. It was given in order to make a trade in consideration of my trouble and services.

Q. It just grew out of this same?

A. It was not given to pay this.

Q. It was all one and the same consideration?

A. Well, I don't know whether it was. You see this $2,700—have paid for furniture—this $300 was given to me; I would not get up the trade unless 300 outside as a kind of a transaction.

Q. So, then, she gave you 5 per cent. a month for $2,700 and $300 besides?

A. To get up the trade by Rhoda Devins and Zella Glenmore; you see she sold her the furniture; this $2,700 I advanced; this $300 was given to me for my services in order to get up this trade.

Q. It was no trade, was it, unless the bargain——

A. Might have been made; if I hadn't advanced the money somebody else might. I made the bargain between parties, but if I would not advance the money somebody else——

Q. Then you would not have got the $300?

A. I don't know whether I would have asked for it.

Q. As an expert in business, don't you think 5 per cent. a month is enough without that $300?

(Objected to. Objection sustained.)

Q. Had this $300 anything whatever to do with the $2,700 note?

A. No.

Q. You made a contract with this woman to give you more, provided you made a trade with another lady, and you made the trade?

A. Yes, sir; account shows she signed this $300 note.

Q. Thatcher signed this $300 note?

354 A. No.

Q. Any security—didn't you keep it a secret from Samuel H. Thatcher; isn't it a fact?

(Objected to).

It don't make any difference what influences were brought to bear.

Verdict for plaintiff, $2,171.

(Indorsed:) Dist. court. Gottlieb *v.* S. H. Thatcher. Notes of trial in dist. court. Exhibit 1. A. W. B.

And thereupon further proceeding in this matter was adjourned to the 27th instant.

October 27th.—The parties appeared as on the 24th instant, whereupon the following proceedings were had:

Deposition of GEORGE W. CLAYTON, a witness produced on behalf of the defendant, who, being duly sworn according to law and interrogated orally, testified as follows:

Direct examination by Mr. DILLON:

Q. What is your name, age, place of residence, & occupation?
Answer. George W. Clayton; 53; Denver; real estate.
Q. Are you the same George W. Clayton who testified in this case on behalf of the defendant on the 30th day of December, 1884? This is your deposition.
Ans. Well, I suppose it is. I forget all about it.
Q. (Reading & handing deposition to witness:) "George W. Clayton, 30th December, 1884."
Ans. That is my signature.
Q. Are you still engaged in the real-estate business?
Ans. Yes.
Q. And are you still acquainted with the value of lands in the city of Denver & vicinity?
Ans. That is a question I cannot answer. I know somewhat of the value.
Q. Are you as well qualified to testify to the value of lands as you were on the 30th December, 1884?
Ans. I suppose so.
355 Q. Please state what, in your opinion, is the present market value of the following-described real estate situate in the county of Arapahoe and State of Colorado, to wit: Commencing at the S. E. corner of the N. E. ¼ of section 25, township 3 S., R. 68 W., running thence N. 10 chains, thence W. 20 chains, thence S. 10 chains, thence E. 20 chains to the place of beginning, containing 20 acres & being the same tract of land marked J. Gotlieb on Rollandet's map of the city of Denver, 1881?

Counsel for plaintiff objected as immaterial & that witness is not competent to testify.

Q. You can refresh your recollection from your former deposition if you desire, (handing same to witness).
Ans. This is a matter I do not have much remembrance about, & this question is placed in such a light—unless I could see just exactly where the land lay—if you had a plat or a map here I could see & I probably could give my judgment or opinion about it. I recollect something about this matter.
Q. Your land there, you know, bounds it on the W. & N.?

Witness then referred to map of Denver.

Ans. My memory is refreshed somewhat about that. I should say it is worth $750 an acre.

Cross-examination of J. A. BENTLEY:

Q. Is it worth more now than when you testified in 1884?
Ans. Double, I should say.

Q. Upon what ground?

Ans. On the ground that property is being sold in its immediate neighborhood for the figures that I have placed upon it.

Q. Is not that a "booming" price?

Ans. I should not think it was, sir.

Q. What has caused the great rise in value from what it
356 was when you testified before?

Ans. I cannot give you the causes of those circumstances. There are probably many circumstances connected with them; the general progress of improvements throughout the city, the increase in population, the general enhancement of land all over the city.

Q. In your former testimony you testified that this property was worth about $325.00 an acre.

Ans. $300.00 to $400.00, is it not?

Q. 325.00; that was your answer. Now you put it at what?

Ans. $750.00.

Q. I wish you would state as specifically as you can the causes which you recognize as having increased the value from $325.00 to $750.00 an acre since December, 1884?

Ans. Well, the causes, as I stated before, the great increase in population of the town, the general improvement that is going on throughout the city, the general advance in business all over the city—I suppose all those matters would form some connection with the progress of the city & the advance of prices.

Q. Do not you put this last estimate upon your judgment of influences which are not executed?

Ans. I think probably that there may be some influences that are not fully consummated; in other words, this property has advanced very rapidly in the last 18 months.

Q. Has not that been a kind of a "boom" in that outside property?

Ans. You might call it a boom; I do not know exactly how you would term that.

Q. We use it in its common phrase.

Ans. There has been a kind of boom recognized here & all over the country.

Q. Do you think that the increase of population & the increased improvements in the city standing alone & disconnected with your views of our prospective growth are sufficient to put that price on it?

357 Ans. I do; I fully think to-day that that property is at a price that it won't depreciate at all. I suppose that is what you want to get at; in other words, if the boom is of such a nature that that property would depreciate, why, then, it is not a substantial appreciation; but you ask me whether it is my opinion that that property will hold its present price. I think that it will do it.

Q. I did not mean exactly to ask that. Do you think the increase of population & the improvements of the city since December, 1884, disconnected with what you regard as its prospective growth, is sufficient to make the difference in the price you have mentioned?

Ans. I do; I think it is fully warranted to hold the property at the price I have stated.

Q. That is, on the condition that this boom goes forward?

Ans. On the condition that there is no special charge made in the town; if it don't go backward it must be forward, I suppose.

Q. What is the distance by the best travelled streets from the court-house to this land & the best occupied streets?

Ans. I could not give that exactly.

Q. Well, approximately?

Ans. I should think it was about 2¼ or 2½ miles; I could not give a positive answer to that.

Q. Towards the outside of the city?

Ans. Yes, sir.

Q. It is outside of the city limits?

Ans. I think is is. I will state that the property has not appreciated there as much in value as some other portions of the town.

Q. It is not as high as some property that is further out?

Ans. Not near as high as other property further out.

Q. On certain streets; on Colfax, for instance?

A. Yes; on Colfax.

GEORGE W. CLAYTON.

358 Subscribed and sworn to this 29th day of October, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

Deposition of PHILIP TROUNSTINE, a witness produced on behalf of the defendant, who, being duly sworn according to law and interrogated orally, testified as follows:

Direct examination by Mr. H. C. DILLON:

Q. What is your name, age, place of residence, & occupation?

Ans. My name is Philip Trounstine; age, 45; I reside in the city of Denver; my occupation at present is that of a commercial traveller.

Q. Are you the same Philip Trounstine who testified before in this case before John W. Webster, examiner?

Ans. I have testified in a case of this kind before Mr. Webster—the same parties. Whether this is the same case or not you will, perhaps, know. If I have signed any papers in this case I am willing to take it as the same case.

Q. Did you know Zella Glenmore in her lifetime?

Ans. Yes, sir.

Q. Is she now dead or alive?

Counsel for plaintiff objects to the testimony as immaterial & incompetent.

Ans. I think that she is dead, sir.

Q. State, to the best of your knowledge, information, and belief, where she died, & when.

Same objection.

359 Ans. She died, I think, within the last twelve months at Albuquerque, New Mexico.

Q. Were you acquainted with Samuel H. Thatcher in his lifetime?

Ans. I was.

Q. Where did he die?

Ans. He died in his room in what was then known as the Crow block, on Holladay street, between 15th & 16th.

Q. In this city?

Ans. Yes, sir.

Q. And the year?

Ans. Now, I am puzzled whether it was 1878 or 1879, but I think it was 1878. I think it was the fall of 1878.

Q. Did he at the time of his death leave any father or mother surviving him?

Objected to as immaterial & incompetent.

Ans. Not to my knowledge.

Q. Did he leave any widow or children?

Same objection.

Ans. Not to my knowledge.

Q. Was he ever married?

Same objection.

Ans. I think not, sir.

Q. Did he leave any brother or sister surviving him?

Same objection.

Ans. He left a brother.

Q. State his name.

Ans. Louis C. Thatcher.

Q. The defendant in this case?

Ans. Yes, sir.

Cross-examination by J. A. BENTLEY:

Q. Have you personal knowledge of the death of Mrs. Glenmore?

Ans. Well, I did not see her die. I simply heard of it. I believe I testified to that before. I did not know anything of it. I simply heard of her death, as it was told to me.

Q. Did you hear that from Joseph Gotlieb, the complainant in this case?

Ans. No, sir.

PHILIP TROUNSTINE.

360 Subscribed and sworn to before me the 29th day of October, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

And thereupon further proceedings in this matter were adjourned to such time as the parties should appear.

On December 17th, 1887, complainant appeared, by J. A. Bentley, Esqr., his solicitor, and the defendant, by H. C. Dillon, Esqr., his solicitor; whereupon the following proceedings were had:

Deposition of VICTOR A. ELLIOTT, a witness produced on behalf of the defendant, who, being duly sworn and interrogated orally, testified as follows:

Direct examination by Mr. H. C. DILLON:

Q. What is your name, age, place of residence, and occupation?

Ans. My name is Victor A. Elliott; my residence is the city of Denver, Colorado; my occupation is a lawyer; at present judge of the district court of Arapahoe county, of the 2nd judicial district; my age is 48 years.

Q. Were you the judge of the said district court in the month of July—say the 21st of July, A. D. 1877?

Ans. Yes; I have been judge since the 2nd day of November, 1876, continuously.

Q. Did you preside at the trial of case No. 3544 in the docket of this court, wherein Joseph Gottlieb is plaintiff and Samuel H. Thatcher is defendant?

Answer. I cannot say from personal recollection, sir; if the records so say, I shall be satisfied that I did.

Q. Do you recollect, &, if so, please state, w hat attorney represented the defendant, Samuel H. Thatcher, when that case was called for trial on the 21st of July, 1877?

Objected to as immaterial and incompetent and the record is an estoppel to the defendant on that subject.

361 Ans. As I have said before, as to my personal recollection of this particular case, I cannot recollect anything about it, sir.

Q. Do you remember of a case between these same parties tried on or about that time wherein Hamilton R. Hunt, Esqr., appeared as attorney for Samuel H. Thatcher?

Objected to as above.

Ans. I remember Hamilton Hunt appearing before me for the trial of a cause about that time, but whether it is this particular case or not my recollection is not certain, sir.

Q. What is your best recollection as to who the parties were in the case in which he so appeared?

Objected to as above.

Ans. I cannot say that I have any independent recollection about it, Mr. Dillon—any independent recollection about it. I recollect circumstances as to which you refreshed my memory this morning as clear as if it was yesterday, but as to identifying it with this case now I cannot do it. Very possibly I might if we had the stenographer's notes of what transpired.

Q. Do you recollect whether in the case which you do remember any other attorney was substituted for Mr. Hunt or appeared in his place?

Objected to as immaterial.

Ans. I recollect a case in which Mr. Hunt appeared as an attorney some ten years ago, in which, after the calling of the case for trial, I perceived that he was unfit to conduct the case and so told him & stopped him, & suggested that V. D. Markham, Esqr., one of the attorneys of the court, who was in some manner associated with Mr. Hunt in the case or in practice, should take his place & proceed with the case, & Judge Markham did, upon my suggestion, take his place and proceed with the case, whether immediately or in the afternoon I do not now recollect, sir.

362 Q. In your opinion, in the case to which you do refer, state whether or not Mr. Hunt was in a fit condition to represent his client in that case.

Objected to as immaterial.

Ans. In my opinion he was wholly unfit to represent any client or any case in court at that time.

Q. And, to the best of your knowledge, recollection, and belief, what was the matter with him?

Objected to as immaterial.

Ans. My judgment was from his manner of talking and motions that he was intoxicated, but the same condition might have been produced by other causes.

Q. Do you know of any other trial that ever took place before you, since you have been judge of this district court, wherein that circumstance occurred which you have just related concerning Mr. Hunt?

Objected to as immaterial and incompetent.

Ans. Never. There never was any other occasion when I stopped Mr. Hunt or anybody else, because I considered him wholly unfit to manage a case & I did that in as mild a manner as I could; nevertheless it was imperative on my part that he should not go on, as he was wholly unfit to go on with the case, and the circumstances are very clear in my mind, but, as I said before, the precise case has not been fixed upon my mind at all, either while Mr. Hunt was there or the subsequent trial and disposition of it when Judge Markham came in and for some purpose represented Mr. Hunt's client.

Q. After refreshing your recollection from the files of the papers in the said case No. 3544, what is your best recollection and belief as to whether you presided in the trial of this case or some other judge?

Ans. I have very little doubt—in fact I may say, even without referring to the records, that I have scarcely a shadow of a doubt

363 but that I presided at all the trials held in the district court of that county during that month. It was the only term of

court that I ever held open at as late a period in the summer as the 20th of July, when I see this verdict was returned on the plea in abatement, until this summer, when my associate, Judge Rogers, continued the term through the month of July.

Q. In the case to which you have referred what attorney appeared for the plaintiff?

Ans. In the case which I have testified about wherein I stopped Hamilton R. Hunt from proceeding with the case on account of his unfit condition to take charge of the case, Eugene P. Jacobson, one of the attorneys of this court, was the counsel on the opposite side—that is, he was the counsel appearing in court. Whether he was attorney of record or not I do not now know.

Mr. Bentley said he had no questions to ask, but would rely on his objections.

VICTOR A. ELLIOTT.

Subscribed and sworn to before me this 21st day of December, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

Deposition of V. D. MARKHAM, a witness produced on behalf of the defendant, who, being duly sworn and interrogated orally, testified as follows:

Direct examination by Mr. H. C. DILLON:

Q. What is your name, age, place of residence, and occupation?

Ans. V. D. Markham; residence, 2611 Stout St., Denver; age, 56; lawyer.

Q. Did you appear as counsel for the defendant in a case pending in the district court of Arapahoe county, State of Colorado, wherein Joseph Gottlieb was plaintiff and Samuel H. Thatcher was
364 defendant and tried on the merits in said district court on or about 21st July, 1877?

Objected to as immaterial.

Ans. I do not remember the case, but I have heard Judge Elliott's testimony, and from the circumstances I am well satisfied that it is the same case at which I was present. I have no definite recollection of participating actively in the case.

Q. Will you please state the circumstances under which you came to appear in the case to which you have referred?

Objected to as immaterial & incompetent.

Ans. I have not any recollection now—distinct recollection now of participating in the case—but I do recollect the circumstances of the case, if it is that same case, & I have little or no doubt about it. I was present in court when Judge Elliott stopped Mr. Hunt & postponed the case for a little while—I do not recollect how long.

Q. To the best of your knowledge, recollection, and belief what was the mental condition of Mr. Hunt at that time?

Objected to as immaterial.

Ans. If this is the same case to which Judge Elliott referred, and which I believe it was, I recollect his condition well from what transpired immediately afterwards. I know that he was not only in an intoxicated condition, but also very much intoxicated.

Q. Was he in a fit condition to try the case or defend his client?

Objected to.

Ans. If it was the same case he was wholly unfit to try that or any other case.

Q. Did you take his place in the case?

Ans. I do not recollect now that I did. I can state this much, that during the winter preceding Mr. Hunt and myself had been together as a kind of quasi partners, sat together for 2 or 3 months
365 and then quit. There was no formal dissolution, because we had not really been formal partners, and roomed together some time after that. I am pretty well satisfied that at the date of this trial, if it was in July, that we were not partners.

Q. What knowledge, if any, did you have of the merits of Mr. Samuel Thatcher's defence at the time you came into the case?

Objected to as incompetent and immaterial, and the defendant is estopped by his employment as attorney.

Ans. I do not recollect the particulars of it. Mr. Thatcher had been a special client of Mr. Hunt's, and always had been. I had very little connection with him. I doubt whether I knew anything about the case at all. I state this to the best of my remembrance, because I knew the relations did exist between Mr. Thatcher & Mr. Hunt.

Q. Do you know whether or not there was involved in the trial of the case to which you refer a promissory note for $2,700, signed by Zella Glenmore and Sam. H. Thatcher and drawing interest at 5 per cent. per month?

Objected to as immaterial.

Ans. I do not now recollect what the issues were in that case.

Q. If there were any credits which should have been applied upon the said promissory note by Joseph Gottlieb on the trial of that case and which were omitted by him in his testimony, did you have any knowledge of such credits?

Objected to.

Ans. Oh, no. If I had any knowledge of any such credits and participated in it, I should have called the attention of the witness to the fact.

Mr. Bentley said he had no questions to ask.

VINCENT D. MARKHAM.

366 Subscribed and sworn to this 26th day of December, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

Deposition of WILLIAM A. SMITH, a witness produced on behalf of the defendant, who, being duly sworn and interrogated orally, testified as follows:

Direct examination by Mr. H. C. DILLON:

Q. What is your name, age, place of residence, and occupation?
Ans. W. A. Smith; 48; Denver; coal business now.
Q. Who was the sheriff of Arapahoe county, State of Colorado, in the year 1877?
Ans. D. J. Cook.
Q. Did you occupy an office under him; if so, what office?
Ans. I was under sheriff under Mr. Cook, of Arapahoe county.
Q. Your attention is called to an alias writ of execution dated the 4th of September, A. D. 1877, and issued out of the clerk's office of the district court of Arapahoe county, State of Colorado, in a case wherein Joseph Gottlieb was plaintiff and Samuel H. Thatcher was defendant, and upon a judgment in that action obtained, & in particular to the return of the sheriff indorsed upon the back of said writ, & you are requested to state whether you are the same W. A. Smith, under sheriff, whose name is signed to that return.
Ans. Yes; the same one exactly.
Q. State who made the execution sale mentioned in that return.

Objected to as incompetent and immaterial and the record is the best evidence.

Ans. I made the sale. It is my return, and I executed this writ, whatever was done.
Q. State whether or not after refreshing your recollection from reading that return whether you made the sale or not.

367 Objected to for the same reason as above stated.

Ans. Yes, sir; I sold the note to Mr. Joseph Gottlieb.
Q. Did you advertise that sale by publication in any newspaper prior to the sale?

Objected to as incompetent and immaterial & the record is an estoppel.

Ans. Yes, sir; I advertised it. I could not say which paper.
Q. Please refresh your memory, if you can, from this paper now handed to you, indorsed proof of publication of sale in Denver Daily Tribune of September 8th to 19th, inclusive, 1877, and state whether or not that is the publication notice which you gave.
Ans. I think that is the advertisement I sold under. John Walker wrote the advertisement out. I can tell that by the way it is written. He wrote that out himself. I never made a sale with-

out its being advertised. Generally we returned the certificate with the original, I think, I have with that.

Q. Did you know at the time you made that levy and sale anything about the real value of that promissory note?

Objected to as incompetent and immaterial.

Ans. No, sir; I do not—the market value of it I do not; that is what you mean, I suppose.

Q. Yes. Did you know at the time whether or not the payment of it was secured by a deed of trust upon real estate?

Ans. No, sir; I did not.

Q. I offer in evidence, in connection with the testimony of Mr. Smith, this proof of publication to which the witness has referred, which said paper is read in evidence and marked Exhibit 2.

Objected to as incompetent and immaterial and the return of the execution is an estoppel.

Mr. Bentley had no questions to ask.

WILLIAM A. SMITH.

368 Subscribed and sworn to before me this 21st day of December, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

An adjournment was then taken until Monday morning, the 19th December, at 9 o'clock.

EXHIBIT 2, A. W. B.

STATE OF COLORADO, } ss:
Arapahoe County, }

I, Crawford Hill, of the said county of Arapahoe, being duly sworn, say that I am the secretary of the Republican Publishing Company, publishers of the Denver Republican, a daily newspaper printed and published in the city of Denver, in said county and State, and that, as such secretary, I am custodian of the files of the Denver Daily Tribune, a daily newspaper published in the said city of Denver during the month of September, A. D. 1877, as well as for a long time prior and subsequent thereto.

And deponent further says that a notice, of which the following is a true copy:

"*Sheriff's Sale.*

"By virtue of a certain alias writ of execution to me directed from the district court of the second judicial district of Colorado, sitting in and for the county of Arapahoe, in favor of Joseph Gottlieb and against Samuel H. Thatcher, whereby I am commanded to make the sum of two thousand one hundred and seventy-one dollars' damages and the further sum of one hundred and four dollars sixty-five cents' cost of suit, less, however, the sum of one thousand seven hun-

dred and ninety-six dollars fifty-five cents indorsed on said writ as having been collected and credited on judgment, I have levied upon and taken into my possession, as the property of the said Samuel H. Thatcher, a certain promissory note in words and figures as follows, to wit:

"'$1,350. DENVER, *January* 3, 1874.

"'Two years after date, for value received, I promise to pay Samuel H. Thatcher or order one thousand three hundred and fifty dollars, with interest at twenty per cent. per annum from date until paid.

"'ANNA C. McCORMICK.'

"said promissory note being indorsed with the words 'Sam. H. Thatcher,' which I will expose and sell at public auction to the highest and best bidder, for cash, at the east front door leading
369 to the court-house, in the city of Denver, on the 19th day of September, 1877, at the hour of ten o'clock in the forenoon of said day.

"DAVID J. COOK,
"*Sheriff of Arapahoe County, Colorado.*

"Dated September 7, 1877."

was published in said the Denver Daily Tribune newspaper for ten consecutive days, and that the first publication of said notice was in said paper bearing date the 8th day of September, A. D. 1877, and that the last publication was on the 19th day of September, A. D. 1877.

CRAWFORD HILL.

Subscribed and sworn to before me this 17th day of December A. D. 1887.

[SEAL.] WILLIAM F. ROBINSON,
Notary Public.

My commission expires March 6, 1890.

[Endorsed:] No. —. U. S. circuit court, district of Colo. Gottlieb *vs.* Thatcher. Proof of publication. Markham & Dillon, Denver, att'ys for defendant.

On December 19th, 1887, complainant appeared, by J. A. Bentley, his solicitor, and the defendant, by E. A. Clark, Esqr., in place of H. C. Dillon, Esqr., his solicitor; whereupon the following proceedings were had:

Deposition of HENRY L. DENISON, a witness produced on behalf of the defendant, who, being recalled and further orally interrogated, testified as follows:

Direct examination by Mr. E. A. CLARK:

Q. Mr. Denison, you are the same Henry L. Denison whose notes as stenographer in the old cases of Gottlieb *vs.* Thatcher in the district court are already in evidence?

Ans. Yes, sir.

Q. You took those notes at that trial?

Ans. I did.

Q. Do you remember, when the case was first called for
370 trial in the district court, who represented the defendant?

Objected to as immaterial.

Ans. Mr. Hamilton Hunt.

Q. Do you recollect who represented the plaintiff?

Objected to as above.

Ans. I do not. I think it was Mr. Brown or perhaps Mr. Jacobson. I am not certain about that.

Q. Who was the presiding judge at that time?

Ans. Judge Victor A. Elliott.

Q. Do you recollect Mr. Hunt's mental & physical condition at that time?

Objected to as immaterial.

Ans. I remember that he was unable to go on with the trial when the case was called in the morning.

Q. For what reason, if you know?

Objected to as immaterial.

Ans. I understood that he was intoxicated.

Q. State what his appearance indicated to you.

Objected to as immaterial and incompetent.

Ans. It indicated that.

Q. That he was intoxicated?

Ans. Yes, sir.

Q. State what, if anything, was done by the court in consequence of Mr. Hunt's condition relative to the trial of the case.

Objected to as immaterial and incompetent and the record is the best evidence.

Ans. The case was postponed until the afternoon.

Q. Did Judge Elliott in postponing the case state why he postponed it?

Objected to as immaterial.

Ans. Yes; he did.

Q. What did he say?

371 Objected to as immaterial and incompetent.

Ans. He said on account of Mr. Hunt's condition he was not fit to try the case, and it would have to be postponed. That in substance.

Q. Postponed until 2 o'clock in the afternoon?

Ans. Yes, sir.

Q. Upon the coming in of the court in the afternoon who, if you know, represented the defendant?

Objected to as immaterial and incompetent and the record is the best evidence.

Ans. Judge Markham—V. D. Markham.

Mr. Bentley had no questions to ask.

HENRY L. DENISON.

Subscribed & sworn to before me this 21st day of December, A. D. 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

Deposition of HENRY C. DILLON, a witness produced on behalf of the defendant, who, being duly sworn and interrogated orally, testified as follows:

Direct examination by Mr. E. A. CLARK:

Q. What is your name, age, place of residence, and occupation?

Ans. My name is Henry C. Dillon; residence, Denver, Colorado; occupation, lawyer; age, 41.

Q. What connection have you with this case?

Ans. Attorney for defendant.

Q. State what efforts, if any, were made to procure the attendance and ascertain the whereabouts of Zella Glenmore, a witness whose evidence has already been taken in this case, at Leadville, before R. H. Buck, examiner in chancery of this court.

372 Objected to as immaterial and incompetent.

Ans. Immediately after the order of this court requiring either the production of that witness for cross-examination or to show cause why she was not produced I began examination and inquiry and search to ascertain her whereabouts. I first applied to the sheriff of Lake county, Leadville, Peter Becker, and employed him to hunt for the witness. He reported to me that he was unable to find her; that she was known in Leadville by the name of Mrs. Matt. Johnson & he was informed that she had gone over to Albuquerque or to Spokane Falls; possibly Salt Lake. I then got Mr. Parks—Daniel E. Parks, of Leadville—to see an old friend of hers at Leadville, named King, and to get King to make inquiries for me. Mr. Parks then reported to me that she was at Spokane Falls. I then wrote to the marshal of Spokane Falls and some telegrams passed between us. He was unable to find her there either by the name of Glenmore or Johnson or any person answering her description. I then caused inquiries to be made at Albuquerque and after these inquiries had been going on for some months I was informed from Mr. King, at Leadville, that she was at El Paso. I then began making arrangements to take her testimony at El Paso and was nego-

tiating with Mr. Bentley to go down there and take her testimony during the summer, but before we were ready to do so information came to me that she was dead. I then got Phil. Trounstine, a traveling salesman here in Denver, to ascertain for me, if he could, the facts as to whether she was dead and when and where she died. He finally reported to me that his information was that she was dead, and that she had died in Albuquerque, but as to when he was unable to get information. I then had Mr. Trounstine examined as a witness in this case and he gave his testimony as to the rumor of her death. Besides that I have written to various women who were engaged in the same business as Zella Glenmore for-
373 merly was—names furnished to me by Miss Lizzie Preston here in Denver, and by Mr. Troustine and Mr. Jacobs. These letters were addressed to parties in Salt Lake City, at Spokane Falls, also San Francisco, and Los Angeles, California, and the last one to Helena, Montana, but from those letters I have not been able to obtain any reply. My efforts have been continuous from the time Judge Hallett made that order until the present to ascertain her whereabouts and to produce her, if alive, and I have been unable to do so.

Mr. Bentley had no questions to ask.

HENRY C. DILLON.

Subscribed and sworn to before me this 21st day of December, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

An adjournment was taken until 9 o'clock Tuesday morning, December 20th.

December 20th the parties appeared by their respective solicitors pursuant to adjournment and, upon their consent, this matter was adjourned until to-morrow, the 21st inst., at 9 a. m.

December 21st, 1887, the parties appeared by their respective solicitors, whereupon the defendant offered in evidence certified copies of certain pleas, pleas in abatement, affidavit of merits, and motion to quash writ of record in a certain cause lately pending in the district court of Arapahoe county, State of Colorado, wherein Joseph Gottlieb was plaintiff and Samuel H. Thatcher was defendant.

To the reception of which in evidence the complainant herein objected by J. A. Bentley, his solicitor, on the ground that the same and each of said copies is irrelevant, immaterial, inadmissable, and incompetent.

Said certified copies constituting together one document
374 received and hereto annexed, marked Exhibit 2.

And thereupon the defendant, by Henry Dillon, Esqr., his solicitor, declared his evidenee in this matter closed.

EXHIBIT 3, A. W. B

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court of the 2nd Judicial District of Colorado within and for the County of Arapahoe, Sitting, &c., of the January Term, A. D. 1877.

SAMUEL H. THATCHER } Attachment. G. D., No. 3544.
ads. }
JOSEPH GOTTLIEB. }

And now comes the said defendant, Samuel H. Thatcher, for the purpose of this motion only and moves the court here to quash and take for naught the writs of attachment heretofore issued against him herein:

First. Because the affidavit upon which said writs are founded upon its face shows that the said indebtedness supposed to be due and owing from defendant to plaintiff was and is secured by chattel mortgage on personal property and does not show that said property had been released, disposed of, or placed out of the reach of the plaintiff or was in any way found to be insufficient to pay said indebtedness.

Second. Because said affidavit shows upon its face that certain of the property of the defendant could not be sold so as to hinder or delay the said plaintiffs.

Third. Because said affidavit does not state any ground for an attachment mentioned in or known to the statute in such case made and provided.

Fourth. Because at the time of the issuance of the writ of
375 attachment in this suit the indebtedness mentioned in said affidavit in attachment was secured by deed of trust given by the defendant to D. H. Moffat, Jr., as trustee on certain lands and premises, to wit, the northwest quarter of section thirty-three and the southwest quarter of section twenty-eight, in township seven south, of range sixty-nine west, in Douglas county, Colorado, which said lands at the time of filing said affidavit were still held by said trustee for the benefit of said plaintiff.

Fifth. And for other reasons, &c.

SAM. H. THATCHER.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Samuel H. Thatcher, being duly sworn, upon oath says that he is the defendant named in the affidavit and writ in attachment above referred to; that the indebtedness mentioned in the said affidavit was secured by him on the 18th day of November, A. D. 1875, by deed of trust given by him to D. H. Moffatt, Jr., as trustee on the northwest quarter of section thirty-three and the northwest quarter of section twenty-eight, all in township seven south, of range sixty-

nine west, in Douglas county, Colorado; that at the time of suing out said writ and filing said affidavit in attachment the said lands had not been sold or disposed of by virtue of said deed of trust, but said deed of trust still remained in full force and virtue.

SAM. H. THATCHER.

Subscribed and sworn to before me this 9th day of January, A. D. 1877.

ROB'T CHALFANT, *Clerk*,
By CHAS. W. TAYLOR, *D'p'ty.*

(Endorsed): No. 3544. Joseph Gottlieb *vs.* Sam. H. Thatcher. Motion to quash writs. Filed Jan. 9th, 1877. Rob't Chalfant, clerk, by Chas. W. Taylor, d'p'ty.

376 STATE OF COLORADO, } *ss:*
County of Arapahoe, }

In the District Court of the 2nd Judicial District of Colorado within and for the County of Arapahoe, Sitting, &c., of the January Term, A. D. 1877.

SAMUEL H. THATCHER } Assumpsit. G. D., No. 3544.
ads. }
JOSEPH GOTTLIEB. }

Samuel H. Thatcher, being duly sworn, upon oath says that he is the defendant named in the foregoing-entitled suit, and that he has a good and meritorious defence to a portion of said action, as he verily believes.

SAM. H. THATCHER.

Subscribed and sworn to before me this 11th day of January, A. D. 1877.

ROBERT CHALFANT, *Clerk*,
By CHAS. W. TAYLOR,
D'p'ty Cl'k.

(Endorsed:) No. 3544. Joseph Gottlieb *vs.* Sam. H. Thatcher. Affidavit of merits. Filed Jan. 11, 1877. Rob't Chalfant, cl'k, by Chas. W. Taylor, d'p'ty.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

In the District Court of the 2nd Judicial District within and for the County of Arapahoe, Sitting, &c., of the January Term, A. D. 1887.

377 SAMUEL H. THATCHER, } Attachment. G. D., 3544.,
ads. }
JOSEPH GOTTLIEB. }

And the said defendant, Samul H. Thatcher, by Hunt and Markham, his attorneys, comes and defends the wrong and injury, when,

&c., and prays judgment of the writ of attachment in this case, and that the same may be quashed, &c., because he says that he has not fraudulently conveyed his property so as to hinder or delay his creditors, as in and by said affidavit and attachment in this case is alleged, and of this the said defendant puts himself upon the country, &c.

HUNT & MARKHAM,
Attorneys for Defendant.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Samuel H. Thatcher, being duly sworn, upon oath says that he is the defendant in the above-entitled cause; that he has heard read the above plea and knows the contents thereof, and that the same and the matters and things therein contained are true in substance and fact.

SAM. H. THATCHER.

Subscribed and sworn to before me this 11th day of January, A. D. 1877.

ROB'T CHALFANT, *Clerk,*
By CHAS. W. TAYLOR, *D'p'ty.*

Endorsed: 3544. Joseph Gottlieb *vs.* Samuel H. Thatcher. Plea in abatement to writ of attachment. Filed Jan. 11th, 1877. Rob't Chalfant, clerk, by Chas. W. Taylor, d'p'ty.

STATE OF COLORADO, } ss:
County of Arapahoe, }

378 In the District Court of the 2nd Judicial District within and for the County of Arapahoe, Colorado, sitting, &c., of the January Term, A. D. 1877.

SAMUEL H. THATCHER } *ads.* JOSEPH GOTTLIEB. } G. D., No. 3544.

And the defendant, by Hunt and Markham, his attorneys, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiff has thereof above complained against him, and of this he puts himself upon the country, &c.

HUNT AND MARKHAM.
Att'ys for Defendant.

And the plaintiff doth the like, etc.
By BROWN & PUTNAM, *His Att'ys.*

And for a further plea in this behalf the said defendant says *actio non*, because he says that the said plaintiff before and at the time of commencing this action was indebted to the defendant in the sum of five thousand dollars for the work and labor, care and diligence of the defendant and by the defendant and before that time done, performed, and bestowed in and about the business of the plaintiff and for the plaintiff at his special instance and request, and also in the further sum of five thousand dollars for divers goods, wares, and merchandise by the defendant before that time sold and delivered to the plaintiff at his special instance and request, and also in the further sum of five thousand dollars for money by the defendant before that time had and advanced to and paid, laid out, and expended for the plaintiff at his like request, and in the further sum of five thousand dollars for other money by the plaintiff before that time had and received to and for the use of the defendant, and in a like sum for so much money before that time and then due and payable from the plaintiff to the defendant for interest upon
379 and for the forbearance of divers large sums of money before then due and owing from the plaintiff to the defendant and by the defendant forborne to the plaintiff for divers long spaces of time before then elapsed at the like request of the plaintiff, and in a like sum for so much money found due the defendant from the plaintiff upon an account stated between them, which said sums of money so due to the defendant exceed the damages sustained by the plaintiff by reason of the non-performance by the defendant of the said several promises in the said declaration mentioned and out of which said sums of money so due to the defendant he, the said defendant, is ready and willing and hereby offers to set off and allow to the plaintiff the full amount of the said damages, according to the form of the statute in such case made and provided, and this the defendant is ready to verify; wherefore he prays judgment.

HUNT & MARKHAM,
Att'ys for Defendant.

And for a further plea in this behalf the said defendant says *actio non*, because he says that after the making of the promises in the said several counts of said declaration mentioned and before the commencement of this suit, to-wit, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-six, the defendant paid to the plaintiff divers sums of money amounting, to-wit, to all the money in the said counts of the said declaration mentioned, in full satisfaction and discharge of all the causes and rights of action mentioned in said declaration, which payment the plaintiff did then accept of and from the defendant in such full satisfaction and discharge as aforesaid, and this the defendant is ready to verify.

Wherefore he prays judgment, &c.

HUNT & MARKHAM,
Att'ys for Defendant.

And for a further plea in this behalf the defendant says *actio non*, because he says that the said several sums of money and
380 the promises in the said several counts of the said declaration mentioned relate to and are one and the same transaction, to wit, the promissory note in the said first count of the said declaration mentioned and none other or farther promise or cause of action whatever, and that before and at the commencement of this suit, to wit, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, at, to wit, the county of Arapahoe aforesaid, the defendant had made and executed to one David H. Moffatt, Jr., as trustee, a certain deed of trust on certain lands and premises, to wit, the northwest quarter of section thirty-three and the southwest quarter of section twenty-eight, in township seven south, of range sixty-nine west, in Douglas county, Colorado, of great value, to wit, of the value of five thousand dollars, whereby and by means of which said deed of trust the plaintiff became and was secured in the payment of said promissory note, and in and by which said deed of trust so made and executed as aforesaid it was stipulated and agreed between the parties, the plaintiff being privy and consenting thereto, that in case of default in the payment of said promissory note at its maturity and the interest thereon the said trustee should sell the said lands and apply the proceeds thereof to the payment of said note and interest. Yet the defendant says that the plaintiff did not procure a sale nor did the said trustee sell said lands or any portion thereof at or before the maturity of said note nor at or before the commencement of this suit, as in said deed of trust stipulated and agreed, but, on the contrary thereof, the defendant says that at the time of the bringing of this suit the said trustee still held said lands by virtue of said deed of trust in trust for said plaintiff, and this the defendant is ready to verify; wherefore he prays judgment, &c.

HUNT & MARKHAM,
Att'ys for Defendant.

381 And for a further plea in this behalf the said defendant says *actio non*, because he says that the said several sums of money and the promises in the said several counts of the said declaration mentioned relate to and are one and the same transaction, to wit, the promissory note in the said first count of the said declaration mentioned and none other or different promise or cause of action whatever, and that before and at the commencement of this suit, to wit, on the eighteenth day of November, in the year of our Lord one thousand eight hundred & seventy-five, at, to wit, the county of Arapahoe aforesaid, one Zella Glenmore, who signed said promissory note as joint maker with this defendant, had made and executed to the plaintiff a certain chattel mortgage upon certain household goods and furniture and goods and chattels of the said Zella Glenmore of great value, to wit, of the value of five thousand dollars, whereby & by means of which said chattel mortgage the plaintiff became and was secured in the payment of said promissory note, and in and by which said chattel mortgage so made and exe-

cuted as aforesaid it was stipulated and agreed between the parties that in case default was made in the payment of said promissory note and interest at its maturity, then the said plaintiff should sell the said goods and chattels and apply the proceeds of such sale to the payment of said note and interest. Yet the defendant says that the plaintiff did not sell said goods and chattels or any portion thereof at or before the maturity of said note nor at or before the commencement of this suit, as in *said* by said chattel mortgage was stipulated and agreed, but, on the contrary thereof, the said defendant says that at the time of bringing this suit the plaintiff still held said chattels under and by virtue of said mortgage, and this the defendant is ready to verify; wherefore he prays judgment, &c.

HUNT & MARKHAM,
Att'ys for Defendant.

382 *Bill of Particulars.*

Work and labor	$5,000
Goods & chattels sold & delivered	5,000
Money lent, paid, laid out, & expended, &c.	5,000
Money had & received, &c.	5,000
Interest	5,000
Account stated	5,000

Copy of Ac.

Joseph Gottlieb to Samuel H. Thatcher, Dr.

1876 & '7.	
For household goods, furniture, &c.	$5,000
" lands	5,000

Endorsed: 3544. Joseph Gottlieb *vs.* Sam. H. Thatcher. Plea. Filed this Jan. 15, A. D. 1877. Rob't Chalfant, cl'k.

Certificate.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

I, William T. Jenison, clerk of the district court of Arapahoe county, State aforesaid, do hereby certify the above and foregoing to be a true, complete, and perfect transcript and copy — pleas, plea in abatement, affidavit of merits, and motion to quash writ, filed of record in a certain cause in said court lately depending wherein Joseph Gottlieb was plaintiff and Sam. H. Thatcher was defendant as the same now remains on file and of record in this office.

Witness my hand and the seal of said court, at the court-
[SEAL.] house, in Denver, county and State aforesaid, this 20th day of December, A. D. 1887.

WILLIAM T. JENISON, *Clerk,*
By G. S. RICHARDS, *Deputy Clerk.*

383 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Andrew W. Brazee, duly appointed examiner in chancery by the circuit court of the United States for the district of Colorado, do hereby certify that on the several days mentioned in the proceedings and depositions annexed I was attended by the counsel and witnesses aforesaid, at my office, 1540 Champa street, Denver, Colorado, except that the witnesses Victor A. Elliott and Vincent D. Markham were attended by me and said counsel at the county courthouse in Denver; that said witnesses, to wit, David H. Moffatt, Henry L. Denison, George W. Clayton, Victor A. Elliott, Vincent D. Markham, William A. Smith, and Henry C. Dillon, each were first duly sworn by me according to law as witnesses in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel, and by consent of the parties, by their several said solicitors, the examinations and depositions of said witnesses were severally stenographically written down and afterwards written out in long hand; that such examinations were had in the presence of the solicitors of the several parties hereto; that said depositions, after being completed and written, were severally read over by me to the witness deposing the same, but not in the presence of the counsel of the respective parties for the reason that said counsel did not choose to attend at such reading.

That after said depositions had been severally read over to the witness making and deposing to the same and corrected by him as appears opposite my initials "A. W. B." in the margin thereof, said depositions were severally signed and sworn to before me by said witnesses so making and signing the same.

I further certify that the foregoing is a true statement of all proceedings had before me in the matter of taking testimony herein, and that Exhibits from 1 to 3, inclusive, were introduced in evi-
384 dence in said cause during the taking of said depositions, and subpœnas for witnesses returned before me are herewith returned and marked "Schedules."

(Indorsed:) No. 228. U. S. circuit court, district of Colo. Joseph Gottlieb *vs.* Lewis C. Thatcher. Evidence for def't. Examiner's report of testimony behalf def't. Opened, published, and filed Dec. 28, 1887. William A. Willard, clerk.

And afterwards and on, to wit, the 7th day of January, A. D 1888, there was opened, published, and filed in said court and in said cause the depositions of Alfred C. Phelps and G. S. Richards on behalf of defendant.

And the said depositions are in words and figures as follows, to wit:

Deposition- Phelps et al. Behalf Defendant.

The depositions of Alfred C. Phelps and G. S. Richards, of the county of Arapahoe and State of Colorado, witnesses of lawful age, produced and examined on the 6th day of January, A. D. 1888, and the deposition- of Bela M. Hughes and Henry C. Dillon, of the county of Arapahoe and State of Colorado, witnesses of lawful age, produced and examined on the 7th day of January, A. D. 1888, the said Alfred C. Phelps at his office, the said G. S. Richards at her office, and the said Bela M. Hughes at his residence in the city of Denver, in the county of Arapahoe and State aforesaid, and the said Henry C. Dillon at the office of J. A. Bentley, in the city of Denver and county of Arapahoe and State of Colorado, by me, William A. Jones, a commissioner duly appointed by a stipulation hereto annexed, directed as such commissioner in the examination of the said Albert C. Phelps, G. S. Richards, Bela M. Hughes, and Henry C. Dillon, witnesses in a certain suit and matter in contro-
385 versy now pending and undertermined in the circuit court of the United States for the district of Colorado, wherein Joseph Gottlieb is complainant and Lewis C. Thatcher is defendant, in behalf of the said defendant, as well *as* on the cross-interrogatories of the said complainant as upon the interrogatories of the said defendant, which were propounded to said witnesses by the counsel for the respective parties and upon none others. The said Alfred C. Phelps, G. S. Richards, Bela M. Hughes, and Henry C. Dillon testified and deposed, each for themselves, as follows:

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

JOSEPH GOTTLIEB, Complainant,
vs.
LEWIS C. THATCHER, Defendant. } No. 228. Equity.

J. A. Bentley, Esq., appeared for complainant, and H. C. Dillon, Esq., for defendant.

ALFRED C. PHELPS, being produced and examined on the part of the defendant, testified as follows:

Direct examination by H. C. DILLON:

Q. Please state your name, age, residence, and occupation.

A. I live here in Denver, am a lawyer by profession and practice, and am somewhere in the neighborhood of forty-five years of age.

Q. Were you one of the attorneys for Samuel Kaucher in a certain action pending in the Supreme Court of the United States wherein Samuel H. Thatcher was plaintiff in error and Samuel

Kaucher defendant in error, No. 126 of the docket of the said Supreme Court and decided at the October term, A. D. 1877?

A. I was one of the attorneys for Samuel Kaucher in the case that is mentioned. I don't remember about the number of
386 the case on the docket or the time it was finally determined.

Q. Did the plaintiff in error in that case give a supersedeas bond in said Supreme Court of the United States and was the writ of error of that case made by the giving of such bond?

To which plaintiff's counsel objects for the reason that the testimony is incompetent and immaterial; that the bond itself is the best evidence, and that it asks for an opinion relative to the effect of the bond and its contents; that the bond itself should be produced.

A. It is a long time for a person to remember a thing of that sort, and I can't say that I have any very definite remembrance about it. I know we were very anxious to get our money, largely on Mr. Kaucher's account and partly on our own account. My recollection is that we never did get it until the case was finally determined, and I further am very well satisfied that we made no effort to collect it by execution. I think it was collectable by execution during the time the case was in the Supreme Court, because I regarded Mr. Thatcher as good at that time, and I don't think we would have remained quiet all that time without attempting to collect the judgment unless there had been something to prevent our proceeding to collect; but as to having any definite recollection about it beyond this I don't think I have any.

Q. Who argued that case for plaintiff in error in the United States Supreme Court?

To which plaintiff's counsel objects as being immaterial.

A. You speak, I presume, of the written argument?

Q. Yes; that is for plaintiff in error—for Thatcher.

A. Well, I don't remember that clearly. Mr. Hamilton R. Hunt was the attorney originally, and my recollection is he died before
387 the case was argued in the Supreme Court of the United States, and I think Bela M. Hughes or his partner; I would not be certain about that.

ALFRED C. PHELPS.

G. S. RICHARDS, being produced and examined on the part of the defendant, testified as follows:

Direct examination by H. C. DILLON:

Q. What position do you occupy in the district court of Arapahoe county, State of Colorado?

A. Deputy clerk.

Q. Have you made an examination of the records and files in case No. 3544 of the docket of this court, wherein Joseph Gottlieb is plaintiff and Samuel H. Thatcher is defendant, for the purpose of ascertaining whether or not any orders were or have been made

by said court discharging the garnishees, Gray and Eicholts, summoned therein or any order upon them to bring any property into this court?

A. I have.

Q. If so, state the result of your examination.

A. I have found none—found no order.

Q. There are no such orders?

A. No, sir.

Plaintiff's counsel here objects to the testimony of this witness as incompetent and immaterial.

Q. In that same case will you please produce the answer of Annie C. McCormick and Isaac L. McCormick, garnishees, who were summoned in that case, or a certified copy thereof?

A. This is the answer.

Q. That is your certificate, is it?

A. No; merely a copy. There is no certificate on it. It is not certified to at all; it is a plain copy of the answer of Annie C. McCormick, garnishee.

Q. Please produce the original, then, of the answer.

A. This is it. (Witness produces the paper.)

Q. Have you made an examined copy of the said answer and have you an examined copy of that answer? I take that to be (referring to paper)?

388 A. Yes.

Whereupon defendant's counsel offers in evidence, in lieu of the original answer, belonging to the files of the district court of Arapahoe county, of Annie C. McCormick, garnashee, an examined copy of the same prepared by this witness, which is hereunto attached and marked "Exhibit I."

To which plaintiff's counsel objects as incompetent and immaterial to the issues.

EXHIBIT 1.

STATE OF COLORADO, } *ss*:
Arapahoe County, }

In the District Court, April Term, A. D. 1877.

JOSEPH GOTTLIEB
vs.
SAMUEL H. THATCHER, ANNA C. MCCORMICK, & JOHN COOK, J., Garnishees. } In Attachment.

Interrogatories to be Answered by Anna C. McCormick and John Cook, Jr., Respectively, Garnishees in This Behalf.

1. To Anna C. McCormick: Are you acquainted with the parties, the plaintiff and defendant, in this cause?

2. To same: Did you at the time of the service of process on you in said cause or are you now in any manner indebted to the

said Samuel H. Thatcher? If yea, set forth fully and particularly for what, how, and to what amount you were so indebted to him, and how the debt was secured, if so secured.

Int'y 1. To John Cook, Jr: Do you know the parties, plaintiff and defendant, in said cause?

2. To same: Had you at the time of the service of proofs on you herein or have you now in your possession, custody, or charge any property, real or personal, goods, chattels, moneys, or credits of said Samuel H. Thatcher?

389 3. To same: Had you then or have you now in your possession any money collected by you as rent for any real estate levied upon under the writ of attachment issued in said cause? If yea, state its amount and the time or times when collected by you and for whom the same was collected and to whom credited; state fully.

BROWNE & PUTNAM,
Att'ys for Pl'ff.

(Endorsed:) 3544. Joseph Gottlieb *vs.* Sam'l H. Thatcher, &c. Interrogatories to A. C. McCormick & Jno. Cook, Jr., garnishees. Filed July 23rd, 1877. Robert Chalfant, cl'k, by Chas. W. Taylor, d'p'ty. Browne & Putnam.

ARAPAHOE COUNTY, } ss:
State of Colorado, }

In the District Court, of the April Term, A. D. 1877.

JOSEPH GOTTLIEB
vs.
SAMUEL H. THATCHER, ANNA C. MCCORMICK, and JOHN COOK, JR., Garnishees. } Attachment.

Answer of Anna C. McCormick to Interrogatories 1st and 2nd.

About four years ago last winter, in December or January, I gave to Samuel H. Thatcher my note for twelve hundred and fifty dollars; I think that was the amount. I don't know when the not- was payable. I think the rate of interest was one and one-half % a month. The records of Arapahoe county will show *and* when the said note was payable. I suppose I gave a deed of trust to secure the payment of the note on twenty acres of land out beyond Swansea, and I also gave Samuel H. Thatcher another note for one hundred and fifty dollars and trust deed to secure the same on my house and two lots in Denver, with the understanding that I was to pay the same whenever I got ready. This note was given two years ago last fall—I think it was in November. I suppose the records

390 of Arapahoe county will show when the note was payable. I know Mr. Samuel H. Thatcher, but I do not know Mr. Gottlieb. I spoke to Mr. Thatcher two years ago this summer about these notes.

MRS. A. C. MCCORMICK.

COUNTY OF ARAPAHOE, } ss:
State of Colorado, }

Subscribed and sworn to before me this 1st day of August, A. D. 1877.

[SEAL.] JOHN H. STIMPSON,
Notary Public.

(Endorsed:) 3544. Joseph Gottlieb *vs.* Sam'l H. Thatcher, &c. Answer of Anna C. McCormick, garnishee. Filed Aug. 2nd, 1877. Robert Chalfant, cl'k, by Chas. W. Taylor, d'p'ty. Browne & Putnam.

Q. Have you examined the files of case No. 2505 on the docket of this court, wherein Samuel Kaucher is plaintiff and Samuel H. Thatcher is defendant, for the purpose of ascertaining whether or not any executions or fee bills have been issued in that case? If so, you will please produce them.

A. These are copies.

Q. Have you got the originals? If so, please produce them.

Witness produces two fee bills issued at the April term, A. D. 1874, the one bearing date of August 26th, 1874, and the other December 15th, 1874.

Defendant's counsel offers the said fee bills in evidence, and, inasmuch as they belong to the files of the court, offers in lieu thereof certified copies of the same under the seal of the district court, which are hereunto attached and marked "Exhibit 2" and "Exhibit 3."

To which plaintiff's counsel objects as being incompetent and immaterial.

391 EXHIBIT 2.

Whole No., 2505; Journal 9, page —; Fee Book 3, page 163.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

In District Court, April Term, A. D. 1874.

SAMUEL KAUCHER
versus
SAMUEL H. THATCHER.

Plaintiff's Fees.

Appr. att'y, .25; iss'g sum's, 1.25	1 50
Filing 8 papers, .95; term dkt., Oct., '73, .75	1 70
Term dkts., Apr., 1874, .30; ent'g 2 ord's, 1.50	1 80
Iss'g dedimus, 2.00; tak'g 1 affd., .20	2 20
Iss'g 2 subp., .80; ent'g 3 ext. ord's, 1.50	2 30
Sw'g jury, .25; sw'g wit., .60; sw'g offc., .10	95
Ent'g judg., .25; fee bill, .50	75
Abstract of judgment	50

Witness fees Ap'l term, 1874	2 50
Jury " "	5 00
Sheriff fees on sum's	1 90
" " 2 subp.	4 70
	25 80

[SEAL.]

I hereby certify the foregoing to be a true copy from my fee book of Samuel Kaucher's costs herein,

EDWARD F. BISHOP, *Clerk*,
By HENRY C. GLOVER,
Deputy Clerk.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

The people of the Territory of Colorado to the sheriff of said county, Greeting:

We command you that if the within fee bill, amounting to twenty-five dollars and eighty cents, shall not be paid within thirty days after being by you demanded you cause the same to be levied on the goods and chattels, lands and tenements, of the said Samuel Kaucher in you- county according to the statute in such case
392 made and provided, and make return of this writ within ninety days, as the law directs, with an indorsement hereon in what manner you shall have executed the same.

Witness Edward F. Bishop, clerk of the district court of
[SEAL.] said county, and the seal thereof, at Denver, in said county, this 26th day of August, A. D. 1874.

EDWARD F. BISHOP, *Clerk*,
By HENRY C. GLOVER,
Deputy Cl'k.

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

I have duly executed the within writ by collecting from the within-named Samuel Kancher, the sum of twenty-seven dollars, of which amount I have paid to the clerk of the district court of Arapahoe county the sum of twenty-two and $\frac{5}{100}$ dollars. The balance I have retained for sheriff's fees; this writ, therefore, returned satisfied in full.

E. A. WILLOUGHBY, *Sheriff.*

$3.75 of within sheriff's fees retained as belonging to E. A. Willoughby.

$1.20 sheriff's fees on this writ also retained.

Received August 27, 1874, 11 a. m.

E. A. WILLOUGHBY, *Sheriff.*
G. H. M.

(Indorsed:) 2505. Fee bill. Arapahoe county, district court. Samuel Kaucher *vs.* Samuel H. Thatcher. Filed in the district court of Arapahoe county this 12th day of Dec., A. D. 1874. Edward F. Bishop, clerk.

393 EXHIBIT 3.

Whole No., 2505; Journal 9, page —; Fee Book 3, page 163.

TERRITORY OF COLORADO, } *ss:*
County of Arapahoe, }

In District Court, April Term, A. D. 1874.

SAMUEL KERSHAW }
versus
SAMUEL H. THATCHER. }

Defendant's Fees.

Appr. att'y, .25; fil'g 8 prs., .90	1 15	
Iss'g 3 subp., 2.25; tak'g 1 affd., .20	2 45	
Appeal bond, 1.00; ent'g 4 ords., 2.00	3 00	
Sw'g wit's, .40; fee bill, .50	90	
Witness fees, April term, 1874	2 50	
Sheriff's fees on 3 subp., paid	6 75	
		16 75
Cr., by cash paid		6 75
		10 00

[SEAL.] — —.

I hereby certify the foregoing to be a true copy from my fee book of Samuel H. Thatcher's costs herein.

EDWARD F. BISHOP, *Clerk,*
By HENRY C. GLOVER,
Deputy Clerk.

TERRITORY OF COLORADO, } *ss:*
County of Arapahoe, }

The people of the Territory of Colorado to the sheriff of said county, Greeting:

We command you that if the within fee bill, amounting to ten dollars and — cents, shall not be paid within thirty days after being by you demanded you cause the same to be levied on the goods and chattels, lands and tenements, of the said Samuel H. Thatcher in your county according to the statute in such case made and provided, and make return of this writ within ninety days, as the law directs, with an indorsement hereon in what manner you
394 *you* shall have executed the same.

Witness Edward F. Bishop, clerk of the district court of
[SEAL.] said county, and the seal thereof, at Denver, in said county, this 15th day of December, A. D. 1874.

EDWARD F. BISHOP, *Clerk*,
By HENRY C. GLOVER, *Deputy*.

TERRITORY OF COLORADO, } *ss*:
County of Arapahoe, }

By virtue of the within writ I have collected from the within-named Samuel H. Thatcher the sum of ten $\frac{50}{100}$ dollars, in full payment and satisfaction of the within writ, of which amount I have paid to Edward F. Bishop, Esq., the sum of ten dollars. The residue of fifty cents I have retained as my fee.

E. A. WILLOUGHBY, *Sheriff*,
By GEORGE H. MILLS, *Deputy*.

Rec'd Dec. 6, 1874, at 6 p. m.

E. A. WILLOUGHBY, *Sheriff*.
G. H. M.

(Indorsed:) 2505. Fee bill. Arapahoe county district court. Samuel Kancher *vs.* Sam'l H. Thatcher. Defendant's costs, $10.00. Judgment rendered —— —, 188–. This writ issued 12, 15, 1874; returnable —— —, 188–. Filed in the district court of Arapahoe county this 9th day of February, A. D. 1875. Edward F. Bishop, clerk, by Chas. W. Taylor, deputy. (En.)

Q. Have you also the appeal bond filed in that same case?
A. Yes, sir.
Q. On appeal from the judgment in that same case from
395 this court to the supreme court of the Territory of Colorado? If so, please produce the same.

Witness produces appeal bond filed May 13th, 1874, signed Samuel H. Thatcher, Robert R. McCormick, and J. E. Bates.

Whereupon defendant's counsel offers the same in evidence, and, as the same belongs to the files of this court, offers in lieu thereof certified copy of said appeal bond, which is hereunto attached and marked "Exhibit 4."

EXHIBIT 4.

Know all men by these presents that we, Samuel H. Thatcher, as principal, and Robert R. McCormick, J. E. Bates, as surety, are held and firmly bound unto Samuel Kancher in the penal sum of thirty-five hundred dollars; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally and firmly, by these presents.

Witness our hands and seals this 13th day of May, A. D. 1874.

The condition of the above obligation is such that whereas the above-named Samuel Kancher did, on the seventh day of May, A.

D. 1874, in the district court of the first judicial district of Colorado Territory within and for the county of Arapahoe, at the April term, A. D. 1874, thereof, recover a judgment against the above-bounden Samuel H. Thatcher for the sum of twenty-seven hundred and ten dollars and forty cents and costs of suit, from which said judgment the said Samuel H. Thatcher has prayed an appeal to the supreme court of said Colorado Territory, according to law: Now, if the said Samuel H. Thatcher shall prosecute his said appeal with effect and without delay and shall well and truly pay or cause to be paid the said judgment, costs, interests, and damages in case the said judgment shall be affirmed by said supreme court, then this obligation to be null and void; otherwise to be and remain in full force and effect.

396 SAMUEL H. THATCHER. [SEAL.]
ROBERT R. McCORMICK. [SEAL.]
J. E. BATES. [SEAL.]

E. L. Smith identifies these signatures.

Endorsed: 2505. Samuel Kaucher *vs.* Samuel H. Thatcher. Appeal bond. Approved and filed May 13th, 1874. Edward F. Bishop, clerk.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

I, William T. Jenison, clerk of the district court of Arapahoe county, State aforesaid, do hereby certify the above and foregoing to be a true, complete, and perfect transcript and copy of the appeal bond — fee bill issued the 26th day of August, A. D. 1874, and a fee bill issued on the 15th day of December, A. D. 1874, as the same now remain on file and of record in this office.

Witness my hand and the seal of said court, at the court-
[SEAL.] house, in Denver, county and State aforesaid, this 6th day of January, A. D. 1888.

WILLIAM T. JENISON, *Clerk.*

Defendant's counsel offers in evidence a certificate of search made by the clerk of the district court of Arapahoe county, Colorado, in case No. 3544, Gottlieb *vs.* Thatcher, which is hereunto attached and marked "Exhibit 6."

To which plaintiff's counsel objects as incompetent and immaterial.

Defendant's counsel offers in evidence abstract of judgment
397 in said case of Samuel Kaucher *vs.* Samuel H. Thatcher, in the district court of Arapahoe county, Territory of Colorado, at the April term, A. D. 1874, together with the certificate of the clerk of said court and the certificate of record thereof in the office of the clerk and recorder of said Arapahoe county endorsed thereon, which is hereunto attached and marked "Exhibit 5."

To which plaintiff's counsel objects as immaterial and incompetent.

G. S. RICHARDS.

EXHIBIT 5.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

In the District Court of said County and Territory, at the April Term thereof, A. D. 1874.

SAMUEL KAUCHER
vs.
SAMUEL H. THATCHER.

Damages	$2,710 40
Costs	25 30
Total	$2,735 70

I, Edward F. Bishop, clerk of said court, do hereby certify that on the 7 day of May, A. D. 1874, the same being one of the days of the April term thereof, A. D. 1874, judgment was rendered in said court in the above-entitled cause against the said Samuel H. Thatcher in favor of the said Samuel Kaucher for the sum of twenty-seven hundred and ten dollars and 40 cents damages and costs of suit; and I do hereby further certify that the said plaintiff's costs to this date amounts to the further sum of twenty-five dollars and 30 cents.

In witness whereof I have hereunto affixed the seal of
[SEAL.] said court and set my hand this 18 day of June, A. D. 1874.

EDWARD F. BISHOP,
Clerk of said Court.

398 (Indorsed:) 21351. Exhibit 5. Abstract of judgment. Samuel H. Thatcher at suit of Samuel Kaucher.

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

This instrument was filed for record on the 18th day of June, A. D. 1874, at 12¼ o'clock p. m., and duly recorded in Book 40 of Records, page 138.

W. D. ANTHONY, *Recorder.*

90 cts.

CHARLES & PHELPS.

EXHIBIT 6.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, William T. Jenison, clerk of the district court of Arapahoe county, State aforesaid, do hereby certify that I have examined the records and journal entries in case No. 3544, Gottlieb *vs.* Thatcher, and find no orders discharging the garnishees Grey and Eicholtz in said cause or any order upon them to bring property into court.

Witness my hand and the seal of said court, at the court-
[SEAL.] house, in Denver, county and State aforesaid, this 6th day of January, A. D. 1888.

WILLIAM T. JENISON, *Clerk.*

BELA M. HUGHES, a witness of lawful age, produced and examined on the part of the defendant, testified as follows:

Direct examination by H. C. DILLON:

Q. State what connection, if any, you had as attorney for either of the parties in case No. 2505 of the docket of the district court of Arapahoe county, Colorado Territory, wherein Samuel Kaucher is plaintiff and Samuel H. Thatcher is defendant, both in that court, in the supreme court of Colorado Territory, and the Supreme
399 Court of the United States, and with particular reference to whether or not the writ of error which was prosecuted from that judgment in the supreme court of Colorado Territory to the Supreme Court of the United States was made a supersedeas.

To which complainant's counsel objects as incompetent, immaterial, and irrelevant, and the question calls for the contents of records, which are themselves the best evidence.

A. In the case of Samuel Kaucher against Samuel H. Thatcher, in the district court of Arapahoe county, Colorado Territory, of the February term, A. D. 1875, I argued the motion for a new trial in that case at the solicitation of Hamilton R. Hunt, which motion being denied, an appeal was taken therefrom by Thatcher, the defendant, to the supreme court of the Territory of Colorado. In that court I filed a written argument and brief for the appellant, Thatcher, and, that court having affirmed the judgment in the court below, Thatcher sued out a writ of error, returnable to the Supreme Court of the United States.

I have before me a paper which I have marked "Exhibit A" and which I desire to file with my deposition or affidavit, and further request the officer taking this deposition or affidavit to endorse the same with his name and the style of his office, with the date of the day hereof, and file the same with my said deposition or affidavit, to be considered and taken as part thereof. This certificate of the clerk of the supreme court was obtained by me or Mr. Hunt, the other counsel, with a view to ascertain what the penalty in a bond for supersedeas should be. I find on the reverse side of said certificate in my own handwriting:

"Rule 29, Sup. Co. U. S. Bond must be for the whole am't of ju'g. & costs & interest, including just damages for delay.

"(*I. e.*, 10 p'r ct.)

HUGHES."

400 This was an instruction endorsed by me on said certificate in order that the clerk of the Supreme Court might make the bond in a sufficient penalty. My impression and my belief is, in-

deed, I am absolutely satisfied, that no bond was given and that the same was made a supersedeas. That is my impression in regard to what is commonly called a supersedeas bond. That is my recollection of the transaction.

My recollection is that I prepared a written argument in the case on its appeal to the Supreme Court of the United States of the same nature and extent as the argument filed by me in the supreme court of Colorado for Thatcher. The words "written argument" in first & second page of the above should be "printed argument."

Complainant objects to the above answer so far as it relates to "Exhibit A," including said exhibit, as incompetent, immaterial, and hearsay evidence.

BELA M. HUGHES.

EXHIBIT A.

Amount of judgment court below, as appears from transcript	$2,710 40
Clerk's fees, supreme court	20 50
Clerk's fees for transcript, court below	34 00
Printer's fees one copy of abstract, 70 fos. at 45	31 50
	$2,796 40

Penalty, $3,500.

TERRITORY OF COLORADO, *ss:*

I, Jno. W. Webster, clerk of the supreme court, do hereby certify that the above and foregoing is a true and correct statement of all the items of costs in this court and judgment of the court
401 below as the same appears from the records in my office.

[SEAL.] JNO. W. WEBSTER,
Clerk Supreme Court.

Rule 29, Sup. Co. U. S.—Bond must be for the whole am't of ju'g't, costs, & interest, including "just damages for delay."
(*I. e.*, 10 p'r ct.)

HUGHES.

WILLIAM A. JONES,
Commissioner.

Jan'y 7th, 1888.

HENRY C. DILLON, being recalled as a witness on behalf of the defendant, is asked:

—. Have you in your possession any evidence of telegraphic remittances from the defendant to Samuel H. Thatcher?

To which plaintiff's counsel objects as incompetent, irrelevant, and immaterial.

A. I have in my possession two telegraph transfers, No. 23 and No. 24, of the Western Union Telegraph Company for one hundred

dollars each, money purporting to have been remitted by the defendant from St. Louis, Missouri, to Samuel H. Thatcher, Denver, Colorado. These transfers were found by me among the papers of Samuel H. Thatcher, deceased, in my possession, and are produced and offered in evidence with the request that the commissioner mark them as exhibits and that they be taken as part of my testimony.

Which said transfers are hereunto attached and marked "Exhibit 7" and "Exhibit 8" respectively.

To which complainant's counsel objects as being incompetent, immaterial, irrelevant, and not the best evidence.

402 EXHIBIT 7.

Western Union Tel. Co.

Telegraph Transfer No. 23.

Received of Thatcher & Co. one hundred $\frac{00}{100}$ dollars, to be paid for Samuel H. Thatcher, at Denver, Col.

E. H. BROWN,
Transfer Agent.

Dated at St. Louis, May 10, 1876.

Amount of transfer	$100 00
Premium, 1 per cent.	1 00
Cost of telegram	3 69
Total	$104 69

No premium will be less than 25 cents.

Transfers not called for within 48 hours after their reception at the paying office will be cancelled and the amount (less premium and tolls) refunded to the sender.

EXHIBIT 8.

Western Union Tel. Co.

Telegraph Transfer No. 24.

Received of L. C. Thatcher one hundred $\frac{00}{100}$ dollars, to be paid for Samuel H. Thatcher, at Denver, Col.

E. H. BROWN,
Transfer Agent.

Dated at St. Louis, May 10, 1876.

Amount of transfer	$100 00
Premium, 1 per cent.	1 00
Cost of telegram	3 69
Total	$104 69

No premium will be less than 25 cents.

Transfers not called for within 48 hours after their reception at the paying office will be cancelled and the amount (less premium and tolls) refunded to the sender.

403 Q. Did the defendant know that these telegraphic transfers were in your possession, and explain why they were not produced by him in evidence when on the stand?

To which complainant's counsel objects as being immaterial, irrelevant, and incompetent.

A. Defendant did not know that they were in my possession at the time he testified as a witness in this case, and I did not know it myself until day before yesterday, when in examining the papers of Samuel H. Thatcher, deceased, for the purpose of finding some evidence among them of the giving of a supersedeas bond in the case of Kaucher against Thatcher in the Supreme Court of the United States, I accidentally ran upon these transfers.

HENRY C. DILLON.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

I, William A. Jones, of the county of Arapahoe and State of Colorado, a commissioner duly appointed by a stipulation to take the depositions of the said Alfred C. Phelps, G. S. Richards, Bela M. Hughes, and Henry C. Dillon, witnesses, whose names are subscribed to the foregoing depositions, do hereby certify that the depositions of the said Alfred C. Phelps and G. S. Richards were taken by me and reduced to writing by me at my office, in the city of Denver and county of Arapahoe and State of Colorado, on the 6th day of January, A. D. 1888, and that the deposition- of the said Bela M. Hughes and Henry C. Dillon were taken by me and reduced to writing by me at my office, in the city of Denver and county of Arapahoe and State of Colorado, on the 7th day of January, A. D. 1888, and that after said depositions were taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said witnesses, and that thereupon the same were
404 signed by the said deponents, Alfred C. Phelps, G. S. Richards, Bela M. Hughes, and Henry C. Dillon, before me, at the place and on the day and year last aforesaid.

WILLIAM A. JONES,
Commissioner.

My fees, $22.50, paid by H. C. Dillon, attorneys for the plaintiff.

WILLIAM A. JONES.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

It is agreed that the above and foregoing testimony taken by and before William A. Jones, as a commissioner, shall have the same force and effect as if taken before the examiner of this court

or a notary public, hereby waiving any and all informalities and irregularities as to the manner of taking the foregoing testimony, and reserving only for argument the objections made and reserved in the course of the said examination.

Denver, Colorado, January 7th, 1888.

H. C. DILLON,
Att'y for Def't.
J. A. BENTLEY,
Solicitor for Complainant.

(Indorsed:) 228. Circuit court U. S. Joseph Gottlieb *vs.* Lewis C. Thatcher. Deposition of Alfred C. Phelps, G. S. Richards, B. M. Hughes, and H. C. Dillon for defendant. Wm. A. Jones, commissioner. Opened, published, and filed Jan. 7, 1888. William A. Willard, clerk.

405 And afterwards and on, to wit, the 21st day of March, A. D. 1888, there was handed down and filed in said court and in said cause the opinion of the circuit judge on final hearing.

And the said opinion is in words and figures as follows, to wit:

Opinion Circuit Judge.

In the Circuit Court of the United States for the District of Colorado.

JOSEPH GOTTLIEB, Complainant,
against
LEWIS C. THATCHER, Defendant.

Opinion.

BREWER, *C. J.:*

This case is now before me on final hearing. The facts are these: On July 23rd, 1877, complainant recovered judgment in the district court of Arapahoe county for $2,171 against Samuel H. Thatcher, a brother of defendant. On November 13, '76, Samuel H. Thatcher conveyed to defendant by warranty deed for an expressed consideration of $4,000 the lands in controversy. Complainant caused execution to issue on his judgment, levied upon the lands as the property of Samuel H. Thatcher, bought them in, and now seeks to have this warranty deed set aside as a cloud upon his title and such title quieted as against all claims of defendant. He insists that that deed was fraudulent and void because made by Samuel H. Thatcher with intent to defraud his creditors, complainant among the number.

Many questions are raised and discussed by counsel. In the view which I have taken of this case I shall have occasion to refer
406 to but one or two, and in order to present these some other facts must be stated.

The judgment against Samuel H. Thatcher grew out of these transactions: In November, '75, one Zella Glenmore, the proprie-

tress of a house of ill-fame, purchased a lot of furniture from Rhoda Devins, the proprietress of a like house. She borrowed $2,700 of complainant; gave her note, with Samuel H. Thatcher's endorsement, for that amount. This note was secured by a chattel mortgage on the furniture, which at the time was worth $6,000; also by trust deed on 320 acres of land in Douglas county belonging to Thatcher. Thatcher had no interest in the transaction and was only an accommodation endorser. The note ran one year and drew five per cent. per month interest. At the time of taking this note complainant also took a note for $300, signed by Zella Glenmore alone; which note was given to him, as he says, for his services in making the trade between the two women. According to his testimony, Zella paid 6 months' interest and $100 on the seventh month's interest, or $910 in all. Zella testifies that she paid eleven months' interest. It may be, however, that her testimony is not properly before the court, as when her deposition was taken the issues were different, and under an order made by this court after the issues were put in their present shape she was not produced for cross-examination. When the year for which the note was given, and in November, '76, perhaps on the day before the note matured, complainant seized the furniture under his chattel mortgage and caused it to be sold at public auction. From this, by his own testimony, he realized $1,519.43, in December, '76. The trust deed on the Douglas county lands he also enforced, and from that realized $253.10. Thus, according to his own testimony, he received $2,682.50 from Zella Glenmore personally and from the mortgaged property.

407 Nevertheless he commenced suit for the full amount of the note against Thatcher and recovered judgment, as has been stated, for $2,171. When the case was called for trial Thatcher's counsel was intoxicated and the case was continued a few hours until new counsel could be substituted—counsel who had no previous knowledge of the transactions—and under those circumstances the case was tried. At the time of commencing the suit against Thatcher he garnisheed Gray and Eicholtz and from them obtained possession of a note for $1,350 belonging to Thatcher, secured by deed of trust on twenty acres of land, worth more than the amount of the note. Although this note was thus secured, it was advertised for sale without any notice of the security and bid in by him for $80. Thereafter he had the trust deed foreclosed and under that foreclosure obtained title to the lands now shown to be worth many thousand dollars. It is true that this advertisement and purchase of this note by him was not till after the purchase of the lands in controversy, but the fact that the note was thus secured was disclosed by the records in the case prior to its advertisement and sale.

Again, on May 7, '74, before even the borrowing of the money by Zella Glenmore, one Samuel Koucher had obtained judgment against Thatcher in the district court of Arapahoe county for $2,710.40. This judgment was taken on error to the supreme court of the Territory and thence to the Supreme Court of the United States and by each court affirmed; by the latter on December 17,

'77. On this judgment execution was issued on January 29, '78; the land bought by defendant and deed made to him Nov. 25. '78.

There is a question in the case as to whether the lien of this judgment had not been lost, but I do not care to pursue an inquiry into that question. Returning now to the facts previously noticed, it may be stated that the judgment of July 23, '77, is conclu-
408 . sive between complainant and Samuel H. Thatcher as to his indebtedness, but it is not conclusive upon defendant, a grantee from Samuel H. Thatcher before the judgment, either as to the amount of the debt or as to the circumstances and character of the transaction out of which the indebtedness arose.

The authorities upon this question are uniform and clear. I cite a few of them:

Hafner *vs.* Irwin, 4 Ired. (L.), 529.
Collinson *vs.* Jackson, 14 Fed. Rep., 309.
Clark *vs.* Anthony, 31 Ark., 549.
King *vs.* Tharp, 28 Iowa, 283.
Estey *vs.* Long, 41 N. H., 103.
Bruggerman *vs.* Hoerr, 7 Minn., 337.
Sargent *vs.* Salmond, 27 Me., 539.
Caswell *vs.* Caswell, 28 Me., 233.
Downs *vs.* Fuller, 2 Met., 135.
Carter *vs.* Bennett, 4 Florida, 283.
Hall *vs.* Hanley, 2 Watts (Pa.), 355.
Warner *vs.* Perry, 22 Vt., 155.
Boutwell *vs.* McClure, 30 Vt., 676.
Ingalls *vs.* Brooks, 29 Vt., 399.
Freeman on Judgments, section 336.
Bump on Fraudulent Conveyances, 558.

In the case of Ingalls *vs.* Brooks the facts were as follows: Israel Brooks conveyed all his lands to his son, Clark Brooks, and as part consideration therefor said Clark Brooks agreed to pay all the debts of his said father. Leafy Brooks, who had become the wife of Ingalls, presented a claim against the father, Israel Brooks, against which the son, Clark Brooks, maintained he had a set-off. They compromised. Clark Brooks released his set-off and Ingalls and wife threw off half the amount of their claim. Ingalls then
409 went to the father of Israel Brooks and got him to allow him judgment to go against him for the other half of the claim, of which proceeding Clark Brooks had no notice. Ingalls then levied execution under this judgment on the lands held by Clark Brooks and sold the same, and in course of time got a sheriff's deed and began his action in ejectment. The court uses the following language: "The judgment, being altogether *inter alios* and in express violation of the understanding of Clark when he surrendered the claim against Leafy, his sister, one of the plaintiffs, and paid one-half the amount of the note in money in agreed satisfaction of the whole, could have no effect upon the defendant Clark, who is entitled to show that the note was paid before suit or that the judgment was, for other reasons, fraudulent as to him. Atkinson *vs.*

Allen, 12 Vt., 619. This compromise of the note by Clark was just as effectual a bar to the claim in law and just as effectual a release of his undertaking to pay it at the time of the conveyance as if he had paid all the money upon it. It is true he did undertake or promise to pay off the debts of the grantor, his father, and he has in fact paid them all except the mortgage, which is not in question, and the judgment against Israel, the father, is either a subsequent debt, founded exclusively on his promise to pay what they did not get of Clark and which in no sense under the circumstances can be regarded as forming any part of the debts which Clark was to pay, or else the whole proceeding, so far as it is attempted to give it the appearance of a prior claim, is a fraud upon the compromise and settlement made with Clark and the consequent surrender of the note, and in either case it will not enable the plaintiff to treat the conveyance as void and levy upon it as the land of Israel Brooks. Judgment is reversed and the case remanded."

In the case of Boutwell *vs.* McClure that court uses this language:

410 "The judgment upon the plaintiff's claim in this action, whether rendered before or after the claimant's appearance, concludes nothing on the question. In all such cases there is likely to exist the form of a contract of a date early enough to accomplish its purpose, and it is not uncommon that this contract assumes the more solemn form of contracts, such as that of a promissory note or even a judgment of a court of record, but in either case they are, of course, only conclusive upon the parties under such contracts. Upon any question arising in regard to the creditor being *bona fide* such at a particular date and continuing such to the present time the contract is but *prima facie* evidence of the fact. It is always competent to impeach the debt, either as to its *bona fide* character, its date, or its continuance; for, although the debt once existed and at a date early enough to defeat the alleged fraudulent conveyance, yet, if it has been extinguished by payment on the part of the debtor, it sinks at once into the common mass of his assets and cannot be subsequently kept on foot as the debt of a *bona fide* creditor."

The case of Warner *vs.* Percy was an action in ejectment and presents the identical question that is involved in the case at bar. Plaintiff claimed title under a warranty deed from Mr. Woodward, executed in February, 1842. The defendant claimed title under a deed from L. E. Pelton, executed February 3rd, 1847, and Pelton got title by means of a judgment, execution, levy, sale, and sheriff's deed and secured possession of the premises. The plaintiff, who was grantee in the alleged fraudulent conveyance, brought his action in ejectment. The plaintiff, under objection from defendant, was permitted to give evidence tending to prove that at the time of the conveyance by Woodward, his grantor, to the plaintiff he, Woodward, had claims to a considerable amount, in the language of the exceptions, against Pelton for property delivered to him and for services rendered him, "and the question," say the court, "is now presented for our decision whether such evidence was admissible for the purpose for which it was received by the county court. It was an im-

portant point on the part of the defence to show the motive which induced Woodward to execute the deed to the plaintiff. Was it done with the intention to defraud Pelton? We agree with the county court that if Woodward had or supposed that he had legal claims against Pelton sufficient to meet whatever Pelton had against him it has a decided tendency to rebut any presumption of a fraudulent intent in Woodward to avoid the rights of Pelton. The reason must be obvious. The mutual claims might be made the subject of a set-off, and by these means be mutually concluded. We also agree with the county court that this was proper evidence on the question whether Woodward was really indebted to Pelton at the
411 time when the plaintiff received her deed—that is, in such a sense that Woodward could by a fraudulent conveyance avoid any substantial right of Pelton. The plaintiff is not concluded by the judgment against her grantor, especially as it is subsequent to her deed. As between Pelton and Woodward the judgment is conclusive so far as relates to Pelton's title under his levy, but, so far as the plaintiff is concerned, how far back the indebtedness extends and what was the relation, the relative state of the mutual claims of the parties to the judgment, must be open to inquiry. We see no possible objection to any part of the charge of the court. The charge gives Pelton the right to levy on this property, provided the conveyance was made to the plaintiff in fraud of any of Woodward's creditors, and we think it as favorable to Pelton as any one could claim it should have been. The judgment of the court is affirmed."

This opinion was delivered by Redfield, C. J.

In the case of Sargent *vs.* Salmond it appeared that the plaintiff had taken judgment against his debtor for twice as much as he was entitled to. Upon this fact the court refused to give him any relief as against the alleged fraudulent conveyance of his debtor on the ground that he who comes into equity must come in with clean hands.

In the case of Bruggerman *vs.* Hoerr it appeared that the judgment was rendered upon a debt which was in fact void as against public policy, and for that reason the court refused to interfere with an alleged fraudulent conveyance. These various authorities make it clear not only that the judgment against Samuel H. Thatcher is not conclusive upon the defendant as to the amount of indebtedness, but also that it is the duty of this court, sitting as a court of equity, to inquire into the circumstances out of which such indebtedness is claimed to have arisen, and if those circumstances do not show that the claim is one which in equity and good conscience ought to be enforced, the court will not inquire into the transaction between the judgment debtor and the defendant, but leave the parties where their legal titles have placed them.

Now, it is a familiar doctrine of courts of equity that where a contract appears extortionate and unconscionable it will
412 not be enforced; so where a complainant is seeking to obtain some unfair and unjust advantage, or, having been fully compensated for his time and labor and money, is seeking by technical rules and legal proceedings to grasp more, and wherever generally it

would be inequitable so to do, a court of equity will refuse him any relief.

See, among other cases, Kelley *vs.* Capplice, 23 Kansas, 474, which, by the way, was an action at law; also Brown *vs.* Hall, 14 R. I., 249, and cases cited therein; Butler *vs.* Duncan, 47 Mich., 94; Sims *vs.* Norris, 8 Philadelphia, 84; Earl of Aylesford *vs.* Morris, L. R., 8 Chan. App., 484.

Now, in the first place, this land was in fact appropriated to the payment of the Koucher judgment, which was a prior debt of Samuel H. Thatcher. Whether the lien of that judgment was gone or no, the land was in fact sold upon that judgment and bid in by defendant. Whatever may have been the motives of the two brothers or by which one in fact the money to pay for the land was advanced, the land was sold, the money was advanced by one or the other, and the defendant became the purchaser. As the land thus went to pay a prior debt of the judgment creditor, complainant should have a very clear case for equitable interposition before it should be taken from the defendant and applied to the payment of another debt of his brother.

Again, five per cent. per month is outrageous interest. It may be legal if the statute places no limitations upon the contracting powers of parties, but it is inequitable. Here Zella Glenmore, the borrower, was a woman so situated that she could not go into the money market and borrow on the same terms as others. Taking advantage of her situation, complainant exacts from her this enormous interest, besides demanding a bonus of $300 on the ground of services in enabling her to purchase the property, and then as soon if not sooner than the debt matures sweeps the prop-
413 erty off to a public auction-house, where, as every one knows it would be, it was sold at enormous sacrifice, so that this property, which at the time the loan was made is shown to have been worth $6,000, realizes only one-fourth that sum. Before doing this he has, according to his own testimony, received about one-third of his money back, and, according to hers, more than one-half. Not content with that he appropriates 320 acres of the debtor's land and then by attachment proceedings and sale and with a singular and suspicious omission in the advertisement obtains the title to a note fully secured, amounting with interest to more than half of the original loan, and, enforcing thereafter the trust deed, is now the owner of most valuable property.

Has he not been paid in full and more than full for his original loan and interest, reasonable and unreasonable? May not a court of equity now stay his hands and say, Enough? To grant to him the relief he now asks would be putting a court of equity and good conscience in the position of giving to him an unconscionable profit upon an extortionate contract. I do not think that should be done. I have thus far considered this case solely from the standpoint of the complainant's rights, and have not noticed the circumstances of the transaction as between the two brothers, nor is it necessary in view of the conclusion reached upon the former branch of the case

to comment on the latter. For the reasons indicated a decree must go dismissing the bill.

(Indorsed:) 228. Joseph Gottlieb *vs.* Lewis C. Thatcher. Opinion circuit court judge on final hearing. Filed Mar. 21, 1888. William A. Williard, clerk.

414 And afterwards and on, to wit, the 21st day of March, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable David J. Brewer, circuit judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Decree. Bill Dismissed.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery.

Bill to set aside a deed and for other relief.

This cause having heretofore come on for final hearing at this term upon the bill of complaint, the answer and the replication thereto, and the testimony taken herein and having been argued by counsel—Mr. J. A. Bentley, for the complainant, and Mr. H. C. Dillon, for the defendant—and by the court taken under advisement, and the court, being now sufficiently advised in the premises, doth find the equities in this cause are with the said defendant.

It is therefore ordered, adjudged, and decreed by the court that the bill of complaint herein be, and it is hereby, dismissed at the cost of the said complainant, to be taxed.

And afterwards and on, to wit, the 7th day of July, A. D. 1888, the same being one of the regular juridical days of the May term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Appeal Prayed and Allowed.

JOSEPH GOTTLIEB *vs.* LEWIS C. THATCHER. } 228. In Chancery.

Bill to set aside a conveyance.

415 At this day comes the said complainant, by J. A. Bentley, Esq., his solicitor, and the said defendant, by H. C. Dillon, Esq., his solicitor, also comes.

And thereupon the said complainant prays an appeal from the decree of this court to the Supreme Court of the United States, which is allowed him, conditioned that he file herein his bond, conditioned

according to law, in said appeal in the sum of fifteen hundred dollars ($1,500.00).

Whereupon, on motion of the said complainant, it is ordered by the court that the execution issued herein and now in the hands of the marshal be returned to the office of the clerk upon the filing of the said bond.

And afterwards and on, to wit, the 9th day of July, A. D. 1888, came again the said complainant, by his solicitor, as aforesaid, and filed in said court and in said cause his bond on appeal to the Supreme Court of the United States.

And the said bond is in words and figures as follows, to wit:

Bond on Appeal.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents that Joseph Gottlieb, of San Francisco, State of California, as principal, and Amos H. Root and John R. Hanna, of Denver, Colorado, as sureties, are held and firmly bound unto Lewis C. Thatcher in the full and just sum of fifteen hundred dollars, to be paid to the said Lewis C. Thatcher; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of July, in the
416 year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at the November term, A. D. 1887, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between Joseph Gottlieb, complainant, and Lewis C. Thatcher, defendant, judgment was rendered against the said Joseph Gottlieb dismissing his bill of complaint and for costs of suit, and the said Joseph Gottlieb having prayed and been allowed an appeal from the said decree to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Joseph Gottlieb shall prosecute said appeal to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH GOTTLIEB. [SEAL.]
AMOS H. ROOT. [SEAL.]
JOHN R. HANNA. [SEAL.]

Approved July 9, 1888.

MOSES HALLETT, *Judge.*

Justification.

THE UNITED STATES OF AMERICA, }
District of Colorado, County of Arapahoe, } *ss*:

A. H. Root and John R. Hanna, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real property the sum below set opposite his name—that is to say:

As to A. H. Root, fifteen hundred dollars.

As to Jno. R. Hanna, fifteen hundred dollars,

Over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

A. H. ROOT.
JOHN R. HANNA.

417 Subscribed and sworn to before me, at Denver, this 9th day of July, A. D. 1888.

[SEAL.] FRANK C. VICKERS,
Notary Public.

(Indorsed:) Gen. No., 228. Circuit court of the United States, district of Colorado. Joseph Gottlieb *vs.* Lewis C. Thatcher. Bond on appeal. $1,500.00. Filed this 9th day of July, A. D. 1888. William A. Willard, clerk, by F. W. Tupper, deputy clerk.

And afterwards and on, to wit, the 25th day of February, A. D. 1890, came again the said complainant, by Messrs. Wells, McNeal & Taylor, his solicitors, and filed in said court and in said cause certain affidavits as to value.

And the said affidavits are in words and figures as follows, to wit:

Affidavits as to Value.

In the Circuit Court of the United States for the District of Colorado.
In Equity.

UNITED STATES OF AMERICA, }
State and District of Colorado, } *ss:*

JOSEPH GOTTLIEB, Complainant, }
v.
LEWIS C. THATCHER, Defendant. }

Granville Malcome, being first duly sworn, say- on oath, *each for himself and not one for the other:* I reside at the city of Denver, in the county of Arapahoe, in said State of Colorado, and have been there engaged in the business of buying and selling real
418 estate, both lots within the city of Denver and lands in Arapahoe county, for the space of eight years last past. I think I

am acquainted with the reasonable market value of the properties below described on the 21st day of March, A. D. 1888, and appraise them as then worth at least the sums below set opposite to the several parcels, respectively—that is to say, east division of the city of Denver:

Lot twenty-seven (27), in block seventy-eight (78), six thousand dollars.

Lot four (4), in block one hundred and sixty-five (165), fifteen hundred dollars.

The northeast quarter and southwest quarter of section twenty-four (24), in township one (1) south, of range sixty-seven (67) west, nine hundred and sixty dollars.

East half of southeast quarter sec. 26, town. 1 south, range 67 west, two hundred & forty dollars.

The southeast quarter of section twenty-four (24), in township three (3) south, of range sixty-seven (67) west, eight hundred dollars.

I have not visited or examined specially any of these properties, and they have been worth a great deal more than my estimate.

I have no hesitation in saying that at the time above mentioned, to wit, March 21, A. D. 1888, and ever since, these properties together have been worth a great deal more than five thousand dollars ($5,000).

GRANVILLE MALCOME.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Arapahoe, in the State of Colorado, at the said county of Arapahoe, this 25th day of February, A. D. 1890.

[SEAL.] CHAS. H. SCOTT,
Notary Public.

In the Circuit Court of the United States for the District of Colorado.
In Equity.

419 UNITED STATES OF AMERICA, } ss:
State and District of Colorado, }

JOSEPH GOTTLIEB, Complainant,
v.
LEWIS C. THATCHER, Defendant.

S. V. Farnum, being first duly sworn, say- on oath, *each for himself and not one for the other:* I reside at the city of Denver, in the county of Arapahoe, in said State of Colorado, and have been there engaged in the business of buying and selling real estate, both lots within the city of Denver and lands in Arapahoe county, for the space of ten years last past. I think I am acquainted with the reasonable market value of the properties below described on the 21st day of March, A. D. 1888, and appraise them as then worth the sums below set opposite to the several parcels respectively—that is to say, east division of the city of Denver:

Lot twenty-seven (27), in block seventy-eight (78), at least six thousand dollars.

Lot four (4), in block one hundred and sixty-five (165), about two thousand dollars.

The northeast quarter and southwest quarter of section twenty-four (24), in township one (1) south, of range sixty-seven (67) west, — dollars.

East half of southeast quarter of section 26, town. one (1) south, range 67 west, — dollars.

The southeast quarter of section twenty-four (24), in township three (3) south, of range sixty-seven (67) west, — dollars.

These lands I have never seen and have only a general knowledge of the value of lands in the vicinity. Average lands in the vicinity named were then worth at least three dollars per acre.

420 I have no hesitation in saying that at the time above mentioned, to wit, March 21, A. D. 1888, and ever since these properties together have been worth a great deal more than five thousand dollars ($5,000).

S. V. FARNUM.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Arapahoe, in the State of Colorado, at the said county of Arapahoe, this 25th day of February, A. D. 1890.

[SEAL.] SAMUEL WISTROM,
Notary Public.

(Indorsed:) 228. Circuit court U. S. Joseph Gottlieb *v.* Lewis C. Thatcher. Affidavits of value. Filed Feb. 25, 1890. William A. Willard, clerk.

In the Circuit Court of the United States for the District of Colorado.
In Equity.

UNITED STATES OF AMERICA, *State and District of Colorado,* } ss:

JOSEPH GOTTLIEB, Complainant,
v.
LEWIS C. THATCHER, Defendant.

Daniel F. Carmichael, being first duly sworn, say- on oath, *each for himself and not one for the other:* I reside at the city of Denver, in the county of Arapahoe, in said State of Colorado, and have been there engaged in the business of buying and selling real estate, both lots within the city of Denver and lands in Arapahoe county, for the space of ten years last past. I think I am acquainted with

421 the reasonable market value of the properties below described on the 21st day of March, A. D. 1888, and appraise them as then worth the sums below set opposite to the several parcels respectively—that is to say, east division of the city of Denver:

Lot twenty-seven (27), in block seventy-eight (78), at least five thousand dollars.

Lot four (4), in block one hundred and sixty-five (165), at least twelve hundred dollars.

The northeast quarter and southwest quarter of section twenty-four (24), in township one (1) south, of range sixty-seven (67) west, six thousand four hundred dollars.

The east half of the southeast quarter of section twenty-six (26), in township one (1) south, of range sixty-seven (67) west, sixteen hundred dollars.

The southeast quarter of section twenty-four (24), in township three (3) south, of range sixty-seven (67) west, at least twenty-five hundred dollars.

I have no hesitation in saying that at the time above mentioned, to wit, March 21, A. D. 1888, and ever since, these properties together have been worth a great deal more than five thousand dollars ($5,000).

DANIEL F. CARMICHAEL.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Arapahoe, in the State of Colorado, at the said county of Arapahoe, this 25th day of February, A. D. 1890.

[SEAL.] CHAS. H. SCOTT,
Notary Public.

(Indorsed:) 228. Circuit court U. S. Joseph Gottlieb *v.* Lewis C. Thatcher. Affidavits of value. Filed Feb. 25, 1890. William A. Willard, clerk.

422 And afterwards and on the same day, to wit, the 25th day of February, A. D. 1890, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his bond on appeal to the Supreme Court of the United States.

And the said bond is in words and figures as follows, to wit:

Bond on Appeal.

UNITED STATES OF AMERICA,
District of Colorado.

Know all men by these presents that Joseph Gottlieb, as principal, and —— —— as sure*ties*, are held and firmly bound unto Lewis C. Thatcher in the full and just sum of fifteen hundred dollars, to be paid to the said Lewis C. Thatcher; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of February, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, to wit, on the 21st day of March, A. D. 1888, at the —— term, A. D. 1888, of the circuit court of the United States

for the district of Colorado, in a suit pending in said court between the said Joseph Gottlieb, as plaintiff, and Lewis C. Thatcher, defendant, a decree was rendered against the said Joseph Gottlieb, and the said Joseph Gottlieb having prayed an appeal from said decree to the Supreme Court of the United States, and the same having been duly allowed by the said court, and a citation directed to the said Louis C. Thatcher, citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington on the 2nd Monday of October next:

423 Now, the condition of the above obligation is such that if the said Joseph Gottlieb shall prosecute said appeal to effect and answer all costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH GOTTLIEB. [SEAL.]
WM. BARTH. [SEAL.]

Approved Feb. 25, '90.
MOSES HALLETT, *Judge.*

(Indorsed:) Gen. No., 228. Circuit court of the United States, district of Colorado. Joseph Gottlieb *vs.* Lewis C. Thatcher. Bond on appeal. $1,500.00. Filed Feb. 25, 1890. William A. Willard, clerk.

And thereupon and on the same day, to wit, the 25th day of February, A. D. 1890, came again the said complainant, by his solicitors aforesaid, and sued out of said court a citation to the Supreme Court of the United States.

And the said citation and proof of service thereof is hereto attached, to wit:

424 *Citation, U. S. —— Court.*

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to Lewis C. Thatcher, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, District of Columbia, on the second Monday of October next, pursuant to an appeal taken by one Joseph Gottlieb from the decree of the circuit court of the United States for the district of Colorado, given and entered of record on or about the 21st day of March, A. D. 1888, in a certain cause wherein he, the said Joseph Gottlieb, was plaintiff and you, the said Lewis C. Thatcher, were defendant, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, district judge of the United States for the district of Colorado, this 25th day of February, in the year of our Lord one thousand eight hundred and ninety.

MOSES HALLETT, *Judge.*

[Endorsed:] Gen. No., 228. — court of the United States, district of Colorado. Joseph Gottlieb, plaintiff in error, *vs.* Lewis C. Thatcher, defendant in error. Citation. Filed in circuit court of the U. S. this 26th day of Feb'y, A. D. 1890. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Wells, McNeal & Taylor, attorney- for plaintiff in error.

425 *Proof of Service.*

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

On this 26th day of February, A. D. 1890, personally appeared E. T. Wells before me, the subscriber, clerk of the circuit court of the United States for the district of Colorado, and makes oath that he delivered a true original of the within citation bearing the signature of the Hon. Moses Hallett, district judge of said district and one of the judges of said court, to J. Warner Wells, Esq., one of the attorneys of record of the within-named Lewis C. Thatcher, and another like original to John Q. Charles, Esq., also one of the attorneys of record of said Lewis C. Thatcher; said John Q. Char-es then and there disclaimed and repudiated all connection with the said cause.

E. T. WELLS.

Sworn to and subscribed before me this 26th day of February, A. D. 1890.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk.*

426 And afterwards and on, to wit, the 26th day of February, A. D. 1890, came again the said complainant, by his solicitors aforesaid, and filed in said court and in said cause his præcipe for a transcript of the record and proceedings on appeal to the Supreme Court of the United States.

And the said præcipe is in words and figures as follows, to wit:

Præcipe for Record.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

JOS. GOTTLIEB, Plaintiff,
vs.
LEWIS C. THATCHER, Defendant.

The clerk will make transcript of the record, inserting, 1, the subpœna; 2, the last amended bill & answer thereto; 3, reply; 4, all

orders before submission in order; 5, all depositions & documents on file; 6, final decree; 7, appeal bond, citation, & proof of service.

WELLS, McNEAL & TAYLOR,
Attorney for Pl'ff.

To William A. Willard, clerk, Denver, Colorado, Feb'y 26, 1890.

(Indorsed:) Gen. No., 228. Circuit court of the United States for the district of Colorado. Joseph Gottlieb *vs.* Lewis C. Thatcher. Præcipe for record for Supreme Court. Filed this 26th day of February, A. D. 1890. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Wells, McNeal & Taylor, attorney for compl't.

427 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the subpœna, second amended bill of complaint, answers thereto, replications to answers, all depositions and reports of testimony, all orders of court, decree, and two appeal bonds, heretofore filed or had and entered of record in said court and in a certain cause in said court lately pending, wherein Joseph Gottlieb was complainant and Lewis C. Thatcher was respondent, as fully and completely as the same still remain on file or of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above and foregoing I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 5th day of August, A. D. 1890.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

428 In the Supreme Court of the United States.

JOSEPH GOTTLIEB, Appellant, *v.* LEWIS C. THATCHER, Appellee. } Appeal from the Circuit Court for the District of Colorado.

And the said Joseph Gottlieb comes now, by Ebenezer T. Wells and Robert T. McNeal, his attorneys, and says that in the record and proceedings of the said circuit court and in the final decree of the said circuit court manifest error hath intervened, in this, to wit:

First. The said circuit court by its final decree aforesaid dismissed the bill of complaint of the said Joseph Gottlieb, whereas it appears by the said record that said decree ought to have been given in favor of the said Joseph Gottlieb and according to the prayer of his bill of complaint.

Second. The said circuit court by its final decree herein dismissed the bill of complaint of the said Joseph Gottlieb, whereas it appears by the record and proceedings of the said circuit court that by the law of the land the said Joseph Gottlieb was entitled to a decree declaring null and void the fraudulent conveyance and execution sale in the bill of complaint of the said Joseph Gottlieb complained of.

Third. The said circuit court, after the final submission of the said cause, gave leave to the said Lewis C. Thatcher to file an amended answer to the bill of complaint of the said Joseph Gottlieb, and again, after exception sustained to the amended answer so
429 filed, the said circuit court gave leave to the said Lewis C. Thatcher to file his second amended answer to the bill of complaint of the said Joseph Gottlieb, materially changing the issues theretofore joined and depending between the said parties and depending at the time of the examination of the witnesses, both on the part of the said Joseph Gottlieb and on the part of the said Lewis C. Thatcher.

Fourth. The said circuit court held and declared, in its opinion herein, that upon the case made and established by the said Joseph Gottlieb the said Joseph Gottlieb was not entitled to equitable relief against the fraudulent conveyance and execution sale in the bill of complaint of the said Joseph Gottlieb set forth.

Fifth. The said circuit court held and declared, in the opinion of the circuit judge filed in the said circuit court herein, that the premises in controversy were appropriated to the payment of the certain judgment recovered by the said Samuel Kaucher, as mentioned in the bill of complaint of the said Joseph Gottlieb, whereas by the law of the land the said premises were in no manner answerable for or chargeable with the said judgment.

Sixth. The said circuit court held and declared in the said opinion that the rate of interest stipulated to be paid to the said Joseph Gottlieb in the promissory note of one Zella Glenmore and one Samuel H. Thatcher, which was the foundation of the judgment recovered by the said Joseph Gottlieb in the district court in and for the county of Arapahoe, in the Territory of Colorado, and relied upon by the said Joseph Gottlieb herein as the foundation of his title to the relief by him demanded, was an outrageous rate of interest, and that said
430 Joseph Gottlieb had unjustly and unfairly exacted the same of the said Zella Glenmore and caused divers goods and chattels which had by the said Zella Glenmore been conveyed and mortgaged to him for the securing of the said moneys to be sold at an enormous sacrifice, and that for the reasons so by the said circuit court asserted in that behalf the said Joseph Gottlieb was not entitled to the relief by him in his bill of complaint prayed and demanded, whereas by the law of the land the rate of interest by the said Zella Glenmore in that behalf promised and agreed to be paid was a lawful rate of interest, nor was there any evidence given in the said circuit court to show that the same was unusual, unreasonable, or unfairly exacted, or that the said Zella Glenmore or said Samuel H. Thatcher in and about the execution of the said prom-

issory note were acting under any manner of duress, over-influence, or oppression, or that the said Joseph Gottlieb in or about procuring the sale of the chattels mortgaged for securing the repayment thereof acted unfairly, oppressively, or unlawfully.

Seventh. The said circuit court in and by its opinion aforesaid found and declared as one ground for its decree aforesaid that said Joseph Gottlieb had appropriated three hundred and twenty (320) acres of the debtor's land, and afterwards by attachment and sale, with a singular and suspicious omission in the advertisement, obtained title to a note fully secured, amounting with interest to more than one-half of the original loan, whereas, as appears by the said record, the said Joseph Gottlieb in the supposed appropriation of the debtor's land was lawfully proceeding in and about the enforcement of the security lawfully given and upon the faith whereof the said Joseph Gottlieb had lent and advanced a large sum of
431 money; nor doth it in any manner appear in and by the said record that at the time of the sale of the promissory note in that behalf mentioned the said Joseph Gottlieb was informed that the promissory note in that behalf mentioned was in any manner secured, and in and by the attachment and sale of the said promissory note the said Joseph Gottlieb was proceeding in all things according to the law of the land.

Eighth. The said circuit court in and by its opinion aforesaid held and declared that to grant to the said Joseph Gottlieb the relief by him in his said bill of complaint demanded would be to give him an unconscionable profit on an extortionate contract, whereas by the said record and proceedings it doth appear that the contract whereupon the said Joseph Gottlieb grounded his title to the relief by him demanded was fairly made and entered into without any circumstances of unfairness, oppression, extortion, or wrong, and it doth not appear by the said record that the judgment given in favor of the said Joseph Gottlieb in the district court in and for the county of Arapahoe, in the State of Colorado, set forth in the bill of complaint of the said Joseph Gottlieb as the foundation of his title to the relief demanded, was in any respect unfair, unjust, or excessive.

Ninth. The said circuit court in its opinion aforesaid dismissed the bill of complaint of the said Joseph Gottlieb and denied the relief by him prayed and sought, because (among other reasons therein assigned by the said circuit court in its opinion aforesaid) the said Joseph Gottlieb had by his proceedings in the said opinion mentioned obtained and still retains title to a valuable property other than that in controversy herein and without quieting the title of the said Joseph Gottlieb to such other properties or putting
432 said defendant under conditions in respect thereto, although by the said record and proceedings it doth appear that the said Lewis C. Thatcher was and is claiming title to the said other premises adverse to the said Joseph Gottlieb.

Wherefore, for the errors aforesaid and the manifold other errors in the said record and decree appearing, the said Joseph Gottlieb prays that the decree given in the circuit court in and for the district of Colorado herein may be reversed, annulled, and altogether

held for naught, and that he be restored to all things which by virtue thereof he hath lost, and he also prays judgment for his costs.

WELLS, M'NEAL & TAYLOR,
Solicitors for Appellant.

Endorsed on cover: Case No. 14,168. Colorado C. C. U. S. No. 443. Joseph Gottlieb, appellant, *vs.* Lewis C. Thatcher. Filed September 24, 1890.

Office Supreme Court U. S.
FILED.
JAN 4 1894
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, A. D. 1893.

JOSEPH GOTTLIEB,
Appellant.

vs.

LEWIS C. THATCHER,
Appellee.

Appeal from the Circuit Court for District of Colorado.

BRIEF AND ARGUMEMT FOR APPELLANT.

E. T. WELLS,
R. T. McNEAL,
Solicitors for Appellant.

COLLINS PRINT 1418 & 1420 LARIMER.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, A. D. 1893.

JOSEPH GOTTLIEB,
Appellant.

vs.

LEWIS C. THATCHER,
Appellee.

Appeal from the Circuit Court for District of Colorado.

BRIEF AND ARGUMEMT FOR APPELLANT.

Statement of the Case.

Appellant filed his original bill in January, 1879, and in May following his second amended bill, alleging that at the April term, 1874, of the District

Court for Arapahoe County, Colo., Samuel Kaucher recovered a judgment against Samuel H. Thatcher for $2,710; that on June 18, 1874, an abstract of the judgment was filed with recorder of that county; that no execution was issued on said judgment until January 29, 1878; that at the time said judgment was rendered said Thatcher was seized of certain real estate in that county, to-wit: Lot 27, in block 78, and lot 4, in block 165, in the East Division of the City of Denver; also the N. E. quarter and the S. W. quarter of section 24, and the E. half of the S. E. quarter of section 26, in township 1 south, and the S. E. quarter of sec. 24, township 3 south, all in range 67 W.; that on November 13, 1876, and prior thereto, said Thatcher was indebted to complainant on a promissory note for $2,700 and interest, and being also largely indebted to others, was insolvent, and had no other property than that described out of which his indebtedness could be paid; that on that date, intending to hinder, delay and defraud his creditors, and particularly complainant, executed to his brother, Lewis C. then residing at St. Louis, a deed of conveyance of said lands; that said conveyance was at the time without the knowledge of said grantee, and without consideration; that on November 18, 1876, said Samuel, without delivery to Lewis, and without his knowledge, caused said deed to be filed for record in said county; that afterwards, with knowledge of said fraudlent intent on the part of Samuel, and in furtherance of such fraud, Lewis executed to Samuel his notes for $4,000 under the pretense that they formed a consideration for the sale of said lands; that said notes were never paid, and were never intended to be paid.

It is then alleged that on November 25, 1876, complainant commenced an action in the said District Court against said Samuel upon the aforesaid note, and that on July 23, 1877, complainant obtained judgment against said Samuel for $2,171; that on the next day execution issued on said judgment, which was levied on the lands before described, under which they were duly advertised and sold to complainant, a certificate of sale issued to him, which was duly recorded, and on July 19, 1878, said premises, not having been redeemed from said sale, the sheriff of said county delivered to complainant a deed for said premises, which was duly recorded August 1, 1878.

It is further alleged that on January 29, 1878, an execution was issued on the judgment in favor of said Samuel Kaucher against said Samuel H. Thatcher, which was levied upon the same properties at the instance and request of said Samuel H. Thatcher, and that they were bid in by said Lewis C. at the instance of said Samuel H. Thatcher, and that the amount bid was paid out of the moneys of Samuel H.; that said pretended sale was procured to be made by the said brothers for the purpose of further hindering, delaying and defrauding the creditors of said Samuel; that no consideration or moneys of Lewis were paid, or intended to be paid, on account of such sale and purchase; that in furtherance of the design to hinder, delay and defraud creditors, etc., a certificate of sale was issued to Lewis and recorded, and that afterwards said Samuel procured to be made a deed by the sheriff to said Lewis for said premises; that said Lewis accepted the aforesaid deeds with intent to aid and

abet said Samuel in his purpose to defraud his creditors; that said Lewis now pretends that by virtue of the two several deeds aforesaid to him he is the legal owner of said lands.

The prayer of the complaint is, that both said deeds may be declared null and void, and for general relief.

On August 1st, 1881, Lewis C. Thatcher filed his answer to the second amended bill, which admits the judgment of Kaucher, and the filing of the abstract of it, and that no execution was issued till January 29, 1878, and that Samuel H. Thatcher, on November 13, 1876, was seized of the lands described; avers that defendant has no knowledge as to the alleged indebtedness of Samuel H. to complainant; denies said Samuel's insolvency, and that the conveyances were made for the purpose of hindering and delaying creditors, etc.; avers that Samuel's conveyance was with covenants of warranty in good faith and for valuable consideration; denies that it was without consideration or made with fraudulent intent, or made without defendant's knowledge; denies that the said notes were never intended to be paid, and that no part has been paid; avers that, in fact, they have been paid. The answer further avers that defendant has no knowledge as to the alleged institution of suit by complainant against Samuel H. Thatcher on November 25, 1876, nor whether he recovered a judgment therein for $2,171, or any other sum, nor whether execution issued as alleged, nor whether certificate of sale or deed was issued or recorded as alleged.

The issuing of execution on the Kaucher judg-

ment January 29, 1878, and the proceedings thereunder are then set out in detail; denies the allegation of the bill that the lands in question were levied on or bid in at the instance of Samuel, or that the bid was paid with his moneys; avers that they were bid in for defendant for the sole purpose of relieving them from the lien of the Kaucher judgment; denies that the sale was made for the purpose of defrauding Samuel's creditors, or that the certificate of sale or deed was issued at his instance or request, denies Samuel's insolvency; further denies all fraud or co-operation with Samuel in any fraudulent intent.

The replication is in the usual form. Under the foregoing pleadings testimony was taken before the Master as to the alleged fraudulent character of the transaction set out in the complaint, and on December 22, 1882, the cause was submitted for determination to the Court, and taken under advisement by his Honor, District Judge Hallett. (Rec. p. 210, fol. 320.) On the 15th day of January, 1883, when the submitted cause was awaiting decision, defendant applied for and was granted leave to amend his answer. To the amended answer filed under this order exceptions were filed and, on March 2, 1883, sustained, when a further order was made allowing defendant to again amend his answer. (Rec. p. 211, fol. 321.) Under this order a second amended answer was filed March 21, 1883.

The new matter set up in the second amended answer extends from the first paragraph on page 214 of the Record to and including the second paragraph on page 218, and in substance is: That complainant's judgment against Samuel H. Thatcher

was for a larger sum than was justly due; that the cause of action in that case was money loaned to Zella Glenmore about November 18, 1875, for which a note of $2,700 was given, payable one year from date, with interest at five per cent. per month; that Thatcher was a surety only; that it was secured by mortgage on household furniture of Zella Glenmore, worth $6,000, and by deed of trust from Thatcher on 320 acres of land in Douglass County, of the value of $3,000; that the current rate of interest in Denver at the time of the execution of said note did not exceed one and one-half per cent. per month; that complainant took advantage of said Glenmore and Thatcher, and extorted from them an unreasonable, inequitable rate of interest; that said Glenmore, at the end of every month till November, 1876, paid complainant $135 as interest on said loan; that upon a true and just accounting in equity, complainant should credit upon said judgment as an overpayment of interest $1,949. (Fols. 326-7.)

It is further averred, on information and belief, that on November 17, 1876, complainant took possession of the chattels mortgaged by Glenmore for an alleged default in payment, and on November 27th caused the whole to be sold and struck off to himself for $2,000, thereby extinguishing the said debt that, at the time the said chattels were taken possession of, they were worth $6,000; avers on like information and belief, that about November 30, 1876, complainant caused the said land in Douglas County to be advertised and sold, and bid the same in for $320, and received a conveyance therefor February 17, 1877, and that said land was

reasonably worth $3,000; but the sale was so secretly and fraudulently conducted, without notice to said Samuel H. Thatcher, that complainant was enabled to bid it in as aforesaid; that these payments and the said chattel mortgage sale were fraudulently concealed from the District Court by complainant, and that he pressed said cause to trial at a time when the counsel of the said Thatcher was intoxicated and unable to defend him, and thereby and by complainant's perjury obtained the said judgment for $2,171. (Fols. 327-328.)

It is further averred, on information and belief, that at the time complainant began his attachment suit against Samuel H. Thatcher, among other things Samuel had a promissory note made by Mrs. Ann McCormick for $1,350, secured by deed of trust upon other land in said county, (describing it) and that after recovering his judgment on September 4, 1877, complainant sued out an alias execution thereon, under which said note was levied on and taken possession of and advertised for sale at public auction, but the sale was so secretly conducted that said Samuel H. Thatcher had no notice of either the levy or sale, and complainant on 19th of September, without opposition bid in the said note for $80, and afterwards caused the said deed of trust to be foreclosed, and at the sale on January 10, 1879, became the purchaser at $1,600—the amount due on said note, and received a deed for it; that at the time of said sale, the said land was worth more than $10,000, no part of which has ever been applied by complainant in satisfaction of his judgment; so he says that at the time of the filing of complainant's original bill herein complainant was not in equity

and good conscience a judgment creditor of said Samuel H. Thatcher. (Fols. 329, 330.)

After this second amended answer was filed further testimony was taken under it by the Master and reported to the Court December 28, 1887, (fol. 349) and the cause was again submitted, this time to his Honor, Judge BREWER, then presiding at the Circuit, and now one of the Justices of this Court, who, on March 1, 1888, entered a decree dismissing complainant's bill, at the same time filing another opinion which appears at length at pages 269 to 275 of the printed record.

From an examination of the opinion it appears that his Honor, Judge BREWER, took no account of the issues raised by or the testimony taken under the pleadings as they stood at the time of the first submission of the cause to the District Judge in December, 1882, but based his decision and judgment mainly, if not wholly, upon the second amended answer and the proofs made under it.

THE ERRORS ASSIGNED

Are formally and at length set out at pages 283 to 286 of the printed record; but a brief summary of them for convenience is given here. They are, that the Circuit Court erred:

1st. In dismissing appellant's bill instead of giving a decree in his favor.

2nd. In dismissing appellant's bill, whereas it appears by the record and proceedings that by the

law he was entitled to a decree, declaring null and void the fraudulent conveyance and execution sale complained of.

3rd. In giving appellee leave to file an amended and second amended answer after the final submission of the cause as made by the original pleadings and proofs of both parties, whereby the issues were materially changed and a different cause made.

4th. In holding that appellant was not entitled to equitable relief against the fraudulent conveyance and execution sale set forth in the complaint.

5th. In holding that the premises in controversy were appropriated to the payment of the Kaucher judgment.

6th. In holding that the rate of interest stipulated to be paid to appellant by Zella Glenmore and Samuel H. Thatcher, by their note, was outrageous, and that he had unfairly exacted the same; that he had caused the goods mortgaged to secure said note to be sold at an enormous sacrifice, and that for such reasons appellant was not entitled to the relief prayed.

7th. In finding and holding as one ground of its decree that appellant had appropriated 320 acres of the debtor's land, and that by a suspicious omission from the advertisement of the sale of a note obtained title to the same.

8th. In holding and declaring that to grant appellant the relief prayed would be to give him an unconscionable profit on an extortionate contract.

9th. In dismissing appellant's bill and denying him the relief sought, partly for the reason that appellant had by proceedings in the opinion men-

tioned obtained title to other property than that in controversy, without quieting his title thereto or putting appellee under conditions in respect thereto, although it appears appellee is claiming title to the said premises adverse to appellant.

ARGUMENT.

This being a Chancery suit there is probably unnecessary particularity in the assignment of errors, many of them being directed against the reasons given by the Court for its decree. The first four are probably sufficient to present all the questions to be considered.

It would probably be safe to assume in this argument that the filing of the amended answer, setting up an entirely distinct defense after the cause had been argued and submitted for decison under the issues originally made, was a confession that the complainant's proof entitled him to a decree under those issues. The omission from Judge BREWER's opinion of any reference to complainant's allegations of fraud or the proofs submitted in support of them, may fairly be given a like construction. And yet it may be well to fortify this assumption by reference to the proofs.

I.

The record shows that appellant commenced his action in attachment against Samuel H. Thatcher and Zella Glenmore in the District Court

of Arapahoe county on November 25, 1876, on a note given November 18, 1875, and that a judgment was rendered in his favor on July 23, 1877, for $2,171, after a jury trial of the issues. It also appears that the ground of the attachment was, that said Samuel H. Thatcher had disposed of his property to defraud his creditors, and that the writ of attachment was levied the same day it was issued upon the property described in appellant's complaint, and that the same property was sold under special execution against that property and bid in by appellant, and sheriff's deed was duly executed to him afterwards. (Rec. pp. 25-26, fol. 40, and pp. 139-150.)

For proof that the conveyance by Samuel H. Thatcher to appellee, of November 13, 1876, was fraudulent, and that the subsequent bidding in of the same property under the Kaucher judgment and execution, February 20, 1878, was in furtherance of such original fraud, we need not look beyond the deposition of appellee himself taken by appellant. He admits that he knew of the Kaucher judgment against his brother about the time of its affirmance by the Supreme Court of the Territory, (Rec. p. 43, fol. 68); and that occurred in July, 1875. (Rec. p. 196, fol. 301.) He also says, that when his brother conveyed the property in question to him, November 13, 1876, the Kaucher judgment was mentioned, and it was understood that if that should prove to be a lien, provision was to be made for his protection. (Fol. 69.) And yet the only money he even pretends to have paid on account of this property was the amount bid at the sheriff's sale under that judgment. (Ex. 1, p. 161.)

And without being able to produce any evidence whatever of the transmission of a dollar of this money to his brother, he pretends that it was sent at different times, between November 13, 1876, and the execution sale, for the purpose of providing a fund for paying off the Kaucher judgment in case it should prove to be a lien, which sums were to be credited on his notes, if the judgments should not be a lien. (P. 41, fol. 65.) Yet his two notes of $2,000 each, which he gave his brother, were not payable for two and three years from November 13, 1876. The only one of these notes he could produce in evidence was payable November 13, 1879, and seems to have been hypothecated by his brother for a loan for an undisclosed amount and redeemed by appellee in Denver after his brother's death. (Rec. p. 41, int. 26; p. 161, ex. 3.) Although occupying the position of superintendent of the St. Louis Lead and Oil Company, at a salary of $3,000 to $5,000 per year, and, therefore, presumably a man of some business capacity and habits—he claims to have sent *in currency through the mails* every dollar that he pretends to have paid for this property. The use of checks, drafts, money orders, registered letters and express companies as means of transmitting money seems to have been studiously and diligently avoided. Nor has he preserved a line of writing either from himself to his brother or from his brother to himself as to anything pertaining to this business or such remittances. (P. 27, fols. 43, 44.) Two telegraph money orders from himself to his brother of $100 each are mentioned and are afterwards produced by his attorney, but they are of too early a

date—May, 1876—to be available as remittances on this account. (P. 267, ex. 7 and 8.) It may be safely assumed that these two money orders, manifestly sent for some emergency or crisis in his brother's affairs, represent every dollar transmitted to his brother on any account between this date and his death. It is a remarkable circumstance that these orders—of this early and remoter date and having no relation to the inquiry before the Court—should be preserved and produced in evidence, while nothing pertaining to the more recent and important transactions is produced. It further appears that on the 11th day of January, 1878, appellee executed to his brother a power of attorney under which the latter was authorized to sell, convey and exchange for other property, or "otherwise dispose of to such person or persons, and on such terms as shall to him seem best," all land in the State of Colorado belonging to him, and also "to purchase and acquire by exchange of other land any land in the State of Colorado as shall seem best to my [his] attorney." (Rec. p. 153.) When examined about this power of attorney, his knowledge of it was of that vague character which indicates he had made it at the request of his brother without knowing its character or contents; for he says his recollection was that it was made to enable his brother to sell some timber from a piece of land. (Rec. p. 39, int. 8 and answer.) If he had ever considered this property his own, certainly he would have remembered whether he had given a power of attorney, such as he did give.

It is a fact to be particularly noted that the note of Zella Glenmore and Samuel H. Thatcher to

appellant for $2,700 matured on the 18th day of November, 1876, and that the conveyance by Samuel to Lewis Thatcher of the property in controversy, though dated and acknowledged on the 13th, was recorded on that day. (Rec. p. 151.) Also that on the same day (November 13) Samuel executed to Lewis two other conveyances of property lying in Elbert and El Paso counties, the latter of which was recorded November 17, and the former November 21. (Rec. pp. 202 205.) The consideration named for each of the latter conveyances was $2,000, while that named for the property in question lying in Arapahoe county was $4,000. The facts that the consideration named for the conveyance of the Arapahoe county property was $4,000, and for that in the other counties $2,000 each, and that two notes of $2,000 each were executed, suggest that these figures were used so that one note could be claimed as the consideration for the Elbert county property, the other for the El Paso county property, and both together for that lying in Arapahoe county. In this connection, too, the fact is to be noted that appellee admits that his first visit to Denver or its vicinity was made after his brother's death in 1879, and that he knew nothing whatever as to the situation or value of any of the property conveyed to him except what his brother and his brother's attorney, H. R. Hunt, wrote him. (Rec. p. 37, fol. 58; p. 42, fol. 67.) In his testimony when called on his own behalf, he says, that for a few months after the conveyance he does not know who received the rents of the property, but that he wrote J. Cook & Co., agents having in charge the renting of part of it, for a statement of the rents,

and for what remained in their hands, and they wrote that it had been attached by appellant, and he then adds: "and I have never heard any more of it. Not having heard from Mr. J. Cook, Jr. & Co. further, I supposed the house went unoccupied." (Rec. p. 84, fol. 135.) Remarkable indifference, it must be admitted, on the part of the owner of property! The statement referred to is found at page 162 of the record, and the date of this correspondence appears to be July, 1877—eight months after the pretended purchase. May we not again suggest that the preservation and production of this statement in evidence is remarkable, in view of the pretended destruction or loss of all correspondence and evidences of remittances or receipts of money on account of the alleged purchase of the property at the sheriff's sale or otherwise?

But there is still further evidence in the record that the sheriff's sale was but a device of Samuel H. Thatcher to make certain, if possible, the fraudulent conveyance of November 13, 1876. Robert R. McCormick, who signed Thatcher's bond on appeal to the Supreme Court of the Territory from Kaucher's judgment, when the affirmance of that judgment by this Court was wired to Denver, testifies he called on Samuel H. Thatcher and informed him that he and his associate in the bond would have to pay the judgment "*or sell out the securities he had given us* [them], unless he would pay it himself." His answer was, that "*he would pay it*, or it would be paid, and I need not look after it further." (Rec. p. 55, fol. 88.) He further testifies that Samuel H. Thatcher, in his presence, afterwards told the attorney representing the Kaucher judg-

ment "to issue an execution against certain real estate which he owned in this city;" whereupon he left Thatcher in the attorney's office "*to make out the list of property to be advertised.*" (Rec. p. 56, fol. 89.) The under sheriff, W. A. Smith, to whom this execution was delivered, testifies that Samuel H. Thatcher directed him to levy upon the same property he had before sold to Gottlieb under his execution, and that he (Thatcher) wished him to sell it as quick as he could; "that he had the damned thief now where he wanted him;" and that he promised to bid the amount of the Kaucher judgment at the sale. (Rec. p. 59, fol. 94.) Appellee admits that he himself was not present at the sale. (Rec. p. 80, int. 2 and answer.) His brother, however, was present and busied himself with it, and tried to arrange in advance with the officer conducting it to prevent appellant from getting the property, and to quiet the officer's anxiety as to whether there was to be a cash bidder, he told him he had the money himself to bid, and that it was his own, and on his being assured by the officer that he would not levy on it, he produced a large roll of bills from his pocket, and afterwards bid in the property in the name of appellee, the understanding being that whatever in excess of the judgment he should be required to bid in order to prevent Gottlieb, or some other bidder from securing the property, should be paid back to him. An excess was so bid and paid by Samuel H. Thatcher, which was at once paid back to him. (Rec. p. 60, fol. 96.) His fraudulent intent and animus toward appellee had been before manifested when the under sheriff had appellant's execution under which he bid in the property in

question in 1877. Samuel H. Thatcher then expressed his anxiety to have appellant bid in the property, and thus satisfy his judgment, and then defeat his title under his previous fraudulent conveyance to appellee. (Rec. p. 58, fol. 93.) Another significant fact is, that in addition to the property in question in this suit, by his direction a twenty-acre tract of land to which he never had title, but which had been owned by Mrs. Ann C. McCormick and conveyed by her to David H. Moffatt as trustee, to secure a note of $1,350 to Samuel H. Thatcher, was also included in the levy and sale under the Kaucher judgment. (Rec. p. 158.) The acquisition by appellant of the title to this same tract under the trustee's sale is set up in his second amended answer by appellee as a reason why appellant should not have the relief prayed for in his bill. Yet he himself had a conveyance of that tract in the same deed under which he claims the property in question. The inclusion of this twenty acres in this levy and sale could only have been made by Samuel H. Thatcher for the purpose of hindering or preventing appellee from collecting his judgment. According to the allegations of the second amended answer on this subject, Gottlieb had before the levy of the execution under the Kaucher judgment—September previous—become the owner of this note at an execution sale under his own judgment. The evident purpose of the levy and sale was to leave Gottlieb with an unsecured and valuless note as the fruit of his purchase. In view of the inclusion of this property, all the foregoing facts there could seem to be no escape from the conclusion, not only that the conveyance of November 13, 1876, of the

property in question in this suit, to the appellee, was without consideration, fraudulent and void, as to creditors, but that the subsequent bidding in by Samuel H. Thatcher, of the same property, under the Kaucher judgment, was in furtherance of the fraudulent purpose and effect of the conveyance.

A more comprehensive and stringent enactment against conveyances and contrivances to defraud creditors could scarcely be framed than that of Colorado, which is as follows:

"Every conveyance or assignment in writing or otherwise, of any estate or interest in lands or in goods or things in action, or of any rents and profits issuing therefrom, and every charge upon lands, goods or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered with like intent as against the person so hindered, delayed or defrauded, shall be void."

Rev. Stat. 1883, § 1526.

Adjudications illustrating, construing and applying such statutes to particular transactions need hardly be cited to this Court, but in case any shall be desired we refer to:

2 Bigelow on Fraud, 82-4.
Bump on Fraud. Convey. 594-8.
Kaine vs. Wiegley, 22 Pa. 179.
Kirkpatrick vs. Clark, 132 Ill. 343.
Clements vs. Nicholson, 6 Wall. 299.
Mason vs. Vestal, 88 Cal. 396.
Helms vs. Green, 105 N. C. 251.

Rea v Missouri 17 Wall 532
Blennihasset v Sherman 105 U.S. 117.

The transactions under investigation being between brothers, much less proof is required to establish fraud than if they were between strangers. Indeed, where the relationship is intimate the burden is cast upon the party setting such a title as appellee here relies on, to show affirmatively that it was acquired in good faith and for a valuable consideration.

Burt vs. Timmons, 29 W. Va. 441, and authorities cited.

Hickman's Exr. vs. Trout, 83 Va. 490-92.

Klein v Hoffheimer 10 Sup. Ct R 130
Veeth v Bank of U.S. 2 Pet. 107

II.

Probably at greater length than necessary we have sought to demonstrate that appellee's title to the property is fraudulent and void as against appellant, who was the creditor of Samuel H. Thatcher as early as 1875, and a judgment creditor as early as July, 1877. If this position, as contended for, be maintained, then the error of the learned District Judge in granting appellee leave to file an amended answer setting up an entirely new and different defense after the case made by the original pleadings and proofs had been argued and submitted to the Court for decision, was a serious and fatal one to appellant; for it is manifest, from the opinion of the learned Circuit Judge who afterwards heard the cause, that he determined it solely upon the issues presented by the second amended answer. We confess the record does not present

this error as clearly and broadly as it should, or as we would like. It is proper to state that counsel who present the case for appellant here did not represent him in the Court below. The record and statement of counsel who tried the case in the lower Court constitute our only source of information, and the latter can be of no avail to us. The record shows that after exceptions to the amended answer first filed under the leave complained of, an order was made that defendant (appellee) have leave to again amend his answer within twenty days, complainant consenting thereto. If this be construed—and it would seem to admit of such construction—that complainant consented that defendant might file the second amended answer under which the cause was disposed of, he is precluded from assigning the action of the Court as error. But, if the record admits of the construction—and we submit that it does, and that justice to complainant, as well as to his counsel then representing him, requires it—that the consent was to the *time* given for an amendment, then he is not precluded. The first leave to amend, given after the submission, is uncomplicated with any question of consent (Rec. p. 211), and the second was based upon the first. And it will be noticed that both are based upon a simple motion without showing, as required by Equity Rule 60. And the leave given is to *amend* the original answer, without anything in the motion or order to suggest what the amendment should be. The pleading is in no proper sense an amendment at all, but an entirely new defense. It will be noticed that the so-called second amended answer is a verbatim copy of the original answer,

with a new and distinct defense engrafted into it. Indeed, the new matter has more the elements or qualities of a cross-bill in its scope and effect than an answer; for it practically seeks to have the judgment of complainant against Samuel H. Thatcher set aside, on the ground that the obligation on which it was based was an unconscionable contract, and that the judgment was obtained by fraud and imposition upon the Court, and also to have complainant account for the real value of other property which he had acquired under his judgment for much less than its real value, and in this way have the judgment decreed to be cancelled if it should not be annulled as fraudulent and inequitable. This the trial Court in effect did by its decree, and the reasons given for it. Even if the record must be deemed to show a consent that the answer might be amended, it certainly should not be construed to cover such a pleading as was afterwards filed, which is more than an amendment. In *Snead vs. McCoul, 12 How. 422*, this Court say: "After this cause had been heard and taken under advisement by the Circuit Court, the plaintiff petitioned that Court to permit him to file a further bill by way of amendment and supplement to the original bill of revivor previously filed in the cause, and after being heard by counsel upon his petition, the Court refused to grant the prayer thereof, on the grounds that the application was made at too late a period, and that the changes proposed by the plaintiff in the character of the cause would have been in reality the presenting of an entirely new case rather than an amendment of the original bill. The refusal of the Circuit Court we

hold to have been sound in principle, and it is sustained by the express language and authority of this Court in the case of *Walden et al. vs. Bodley et al.*, which declares, there are cases where amendments may be permitted at any stage of the proceedings in the cause as when an essential party has been omitted; yet amendments which change the character of the bill or answer so as to make substantially a new case should rarely, if ever, be admitted after the cause is set for hearing, much less after it has been heard. Vide 14 Pet. 156. Moreover, a fact which imparts greater force to the refusal of the Circuit Court to permit amendment at so late a stage of the proceedings is this, that the application to the Court appears to have been accompanied by no evidence, not even by an affidavit, to show that the amendment desired could not have been made portions of the original bill; on the contrary, it is manifest that they might have formed a part of the case as originally presented to the Circuit Court." In the later case of *Shields vs. Barrow, 17 How. 144*, this Court further holds that to insert a wholly different case in an amended bill of complaint "is not properly an amendment, and should not be considered within the rule on that subject." And by a very recent decision of this Court, in *Hardin vs. Boyd, 113 U. S. 756*, this Court declare: "Undoubtedly great caution should be exercised when the application comes after the litigation has continued for some time, or when the granting of it would cause serious inconvenience or expense to the opposite side. And an amendment should rarely, if ever, be permitted when it would materially change the very substance of the

case made by the bill, and to which the parties have directed their proofs." We are well aware that amendments to pleadings have generally been regarded by this Court as within the discretion of the trial Courts, and not reviewable here except in cases where such discretion appears to have been abused; but it is submitted that the case at bar falls within the exception, and that the allowance of the so-called amendment was an abuse of the discretion of the trial Court.

1 Daniel's Ch. Pl. & Prac. pp. 778-782.
Campbell vs. Kille et al. 14 N. J. Eq. 229.
Coddington vs. Mott, Ib. 430.
Dow vs. Jewell, 18 N. H. 340.
Third Av. Savings Bank vs. Dimmock et al. 24 N. J. Eq. 26.
U. S. vs. Am. Bell Tel. Co., 29 Fed. Rep. 716.

The vice of allowing this additional pleading at the time is further made manifest by the fact that it assails collaterally, on the ground of fraud, the judgment of appellant against appellee's brother, nearly six years after it was recovered, when, under the statute of Colorado: "Bills for relief on the ground of fraud shall be filed within three years after the discovery by the aggrieved party of the facts constituting the fraud, and not afterwards." (Gen. Stat. 1883, sec. 2174.) The record shows that appellant's original bill was filed February 18, 1879, and this new pleading and defense was therefore filed more than three years after this suit was commenced.

III.

If for any reason this Court shall hold that the allowance of the so-called second amended answer is not reviewable or reversible error, the effects of it are yet under its control if the trial Court gave an erroneous judgment under it. His Honor, Judge BREWER, held, that under the pleading, appellee could collaterally attack the judgment of appellant, recovered July 23, 1877, in the District Court of the State, against Samuel H. Thatcher, for alleged errors or irregularities in the proceedings, and could also go back of the judgment and assail on equitable grounds the contract upon which the judgment was based. In effect it is held that the fraudulent grantee of Samuel H. Thatcher, the judgment debtor of appellant, may retry in this collateral proceeding the merits of the case determined in the District Court. This we regard as a very grave and serious error. The opinion which appears in full in the record discusses this question at considerable length, and cites a large number of authorities in support of the conclusion reached. All these authorities have been carefully examined, and we think nearly all of them, in their facts and principles, are clearly distinguishable, and few, if any, applicable to the case at bar. The first respect in which they are distinguishable is, that here there was an adversary suit, in which every possible defense was pleaded and contested in a jury trial, resulting in a judgment for plaintiff. In other words, there was not only a genuine contest, but a trial on the merits. In some of the cases cited the judgments were collusive, and were mere devices to de-

fraud creditors. In many of them the judgment was by default, and there had been no opportunity to set up an existing defense nor to move for a new trial or pray an appeal. In the case at bar all these opportunities existed, and none of them were availed of. And it is also manifest that the reason they were not, was not for want of a diposition to contest and defeat the recovery. It is further manifest from the record and even the opinion of the trial judge that an appeal would have been futile if taken. It is possible that the trial Court might have exercised its discretion and have given Samuel H. Thatcher a new trial on the ground that the counsel upon whom he had mainly relied to try the case was intoxicated, but we submit that it would have been an abuse of such discretion and it is not at all probable that such an application would have been granted, if it had been made. It is further manifest from the record that the judgment debtor concluded that he had a more effective escape from the judgment than either a motion for a new trial or an appeal, and that was, with the cooperation of his brother, by defeating the collection of the judgment.

In *Hafner vs. Irwin, 4 Ired.* (L.) 579, the first case cited in the opinion of Judge BREWER, it appears a debtor conveyed his property to a trustee for the payment of certain creditors, provided he himself should not pay them by a certain date, omitting provision for others of his creditors; and one of the latter class seized a part of the property under execution against the debtor. The trustee brought trover for the property levied on and claimed the creditor's judgment was void, the creditor

claiming the trust conveyance was void on the ground that its effect was to hinder and delay creditors. The trial Court directed that the evidence introduced tending to impeach defendant's judgment for fraud was material only so far as it tended to show that in truth the alleged debtor was not indebted to defendant, and that the judgments were a sham. The Appellate Court on this question say: "It is true that the judgment is not conclusive on the party claiming under the deed, for judgments may be fraudulent as well as deeds. It is therefore open to the grantee in the deed to show that the recovery was by *covin or collusion* between the plaintiff and defendant therein, for a pretended and not a true debt." It is further held in that case that the judgment could not be collaterally impeached as void for defects in the leading process.

Clark vs. Anthony, 31 Ark. 347, the second case cited was a suit by a creditor to have a transfer of property of the debtor to his wife set aside, and the property subjected to the payment of his judgment. There was a demurrer to the bill, which was held sufficient. A dictum, however, was then indulged by the Court to the effect that if the alleged fraudulent grantee had answered and denied the validity of the judgment set up in the bill, she could have been permitted to assail it.

In *Collison vs. Jackson*, 14 Fed. Rep. 309, a conveyance by an indebted husband to his wife is declared fraudulent and void, as against his creditor. It was contended by the wife that the judgment of the creditor was void for want of jurisdiction of the Court rendering it. It was objected that this would be a collateral attack on the judgment, and

could not be allowed. Before disposing of the question whether the Court rendering the judgment had jurisdiction, the Court (Dis. Judge Deady) says: "But before doing so it is proper to dispose of the point made by the plaintiff that defendant can not attack this judgment collaterally. I think she can; and that the case falls within the rule that when the right of a third person may be affected collaterally by a judgment *procured by fraud or collusion of the parties thereto*, and which for any reason *is erroneous and void*, and he cannot bring a writ of error to reverse the same, he may allege and prove or show its invalidity in any proceeding in which it is sought to be used to his prejudice," citing *Freeman on Judgments*, §§ 335-7. The objection to the jurisdiction was, however, overruled, and the conveyance declared fraudulent. It will be observed that even in this dictum it is not suggested that a judgment may be collaterally attacked for any other cause than *fraud* or *collusion* of the parties, or where it is both erroneous *and* void. There is no intimation that an erroneous or irregular judgment may be so attacked—it must be *void* or have been collusively obtained.

The next case cited, *King vs. Sharp, 26* (*not 28*) *Iowa, 283*, presents a clear case of *collusive, fraudulent* and *confessed* judgment by one brother in favor of another for the purpose of defeating a valid conveyance previously made by the pretended judgment debtor to his wife whom he had since deserted and murdered.

In *Estey vs. Long, 41, N. H. 103*, it appears that the note upon which the judgment was rendered was given for the purpose of having judgment en-

tered on it and having the land in question levied on under it and sold for the benefit of the maker of the note, in order to defeat a previous conveyance made by him. The Court say: "The conveyance from Long to Britton and the note and mortgage from Britton to Long *were mere pretenses* and part *of a fraudulent* contrivance to enable Britton indirectly through Long, as an agent, and in his name, to avoid a deed which he could not avoid directly in his own name. The law by which defendants seek to make void plaintiff's deed is a law to secure a debtor's property to his creditors, not to himself. * * * They ask a court of justice to uphold an actual fraud at the expense of a technical and constructive one to annul a deed fraudulent only in law and to ratify a conspiracy fraudulent in fact." There can be no question that under such circumstances a judgment may be assailed collaterally by any one affected by it. A judgment so rendered would be in violation of the express provisions of the statute of Colorado, already quoted and contrary to every rule of equity and principle of law, as an agreement and conspiracy to prostitute the process and judgments of a Court to purposes of fraud.

Bruggerman vs. Hoer, 7 Minn. 337, is more nearly in point in the case at bar than any other cited; and yet it is distinguishable. It seems to have been a suit in equity by a judgment creditor of one Keck to set aside a conveyance by him to Hoer as fraudulent. There had been no execution sale as in the case at bar and the judgment proceeds largely upon the fact that the plaintiff in the suit was compelled to go behind his judgment which was recovered

long after the alleged fraudulent conveyance was made, in order to show that he was, in fact, a creditor at that time. The judgment and opinion of the Court are placed explicitly on the ground that the obligation upon which the recovery was had was contrary to public policy and void, being given for a part of the claim of a pre-empter of public land. While the facts are not very fully and clearly set out, it would seem that there was collusion between the judgment creditor and the debtor; for the Supreme Court say: "We do not recognize the power of a grantor under such circumstances to destroy or impair the title of his grantee by neglecting or *refusing to make a proper defense to an action against himself alone, in which the title was in no way involved.* * * * And his failure to make the proper defese whether by *collusion* with plaintiff or through indifference as to the result of the action, would be a fraud upon the grantee if the judgment were allowed to affect the conveyances." The Court say no authority was cited by counsel in support of the point that the Court could go behind the judgment and inquire into the alleged indebtedness on which the judgment was founded, and none is cited by the Court. It would seem, too, that the judgment relied on was by default, if not by collusion between the parties.

Sargent vs. Salmond, 27 Me. 337, came under review in *Sidensparker vs. Sidensparker, 52 Me. 481*, wherein that case is distinguished from such as the one at bar. The Court in the latter case say: "In the case at bar the defendant seeks to invalidate a judgment rendered after trial before a jury, where no suggestion of fraud or collusion or want of juris-

diction or error in law is made. His complaint is that the jury erred in determining the question of fact. The case differs from *Sargent vs. Salmond, 27 Me. 541*, where the objection was founded upon an error in law, the judgment plaintiff having recorded a judgment on default for double the amount he was entitled to by law. It is an attempt of a stranger to *retry an issue already determined between the parties* in accordance with the forms and principles of law and without fraud or collusion. To sustain the exceptions upon this branch of the case would be to undermine the foundations of the highest judicial authority, and to launch at once into the ocean of uncertainty without chart, helm or compass. It would be to grant judicial license to one who should take a conveyance from a party sued for slander, tresspass, malicious prosecution, or the like, with intent to protect the property from the impending judgment, to retry such question on the issue of the legality of the conveyance. Reason and authority forbid such procedure." (Pp. 489-90.)

In the other case cited in the opinion from Maine (*Caswell vs. Caswell, 28 Me. 233*), it could not be said that there was even a default. The judgment was entirely the result of a mistake on the part of the Court, and when there was a perfectly good defense. The doctrine on this subject is stated to be: "If a debtor suffers judgment to be rendered against him by collusion, for the purpose of having his property taken by virtue thereof, to the delay of creditors, a creditor may avoid the effect of the judgment by proof of the collusion. And if the judgment is wrongfully obtained by fraud between the parties for the purpose of defeat-

ing the title of a third party, the latter may plead the matter in avoidance of the judgment." (P. 237.)

The case cited from Massachusetts (*Downs vs. Fuller, 2 Metc. 135*) may be disposed of by a brief quotation from the opinion: "In this case the plaintiff claims a right in equity to redeem certain real estate which has been taken and set off on execution by defendant. The right claimed was taken on a second execution in favor of plaintiff and sold to him in pursuance of statute. The case depends upon the validity of this sale. The objection to its validity is, that the judgment on which the plaintiff's execution issued was void; as when his original suit was served, the defendant in that suit was not residing within the commonwealth, and had no notice of the action, and that the plaintiff nevertheless took judgment against him at the first term, in contravention of Rev. Sts. c. 92, sec. 3. That a *void* judgment may be impeached by plea and proof is very clear." The Court then illustrates by reference to judgments obtained by fraud and covin between the parties, or by collusion for the purpose of delaying and defrauding creditors, and holds that a creditor may avoid such judgment. The Court being without jurisdiction, its judgment could be impeached for that reason by any one against whom it was made the basis of a claim.

In *Hall vs. Hamlin, 2 Watts*, 355, it appears that the mother of the plaintiff, as executrix of his father, confessed a judgment in plaintiff's favor, when, in fact, the estate was not indebted to him, and this judgment and the execution sale under it were made the basis of a bill in equity to set aside

a conveyance made by the father in his lifetime of property to defendant in trust for his daughter; another case of a collusive judgment where there was no indebtedness.

The report of the Florida case (*Curtis vs. Bennett, 4 Florida, 283*) occupies seventy-five pages of the report. A mortgage had been assigned without the note secured by it, and the assignee foreclosed it by suit, making the mortgagor a party instead of the purchaser of his equity of redemption. The controversy arose between the purchaser under the decree of foreclosure and the purchaser of the mortgagor's equity of redemption. It was claimed by the holder of the latter title that the decree of foreclosure was void, because he was not made defendant instead of the former owner. The Court holds that a voluntary and fraudulent conveyance is good between the parties and their representatives, and against all persons except creditors, and that the creditor of the fraudulent grantee had no title to the property, but only a right to have his debt paid out of the property by a sale under judgment; that in order to do this, he must prove himself to be a judgment creditor, and that the holder of the alleged fraudulently acquired title could contest the validity of such judgment. It is then found and held that in the foreclosure suit in which the judgment relied on was recovered, there was no notice to the defendant Jordan of the amended petition of Carter upon which the judgment was based, and that Jordan was not the proper party defendant anyhow. It is therefore held that Carter, by his judgment, did not establish the relation of judgment creditor to Jordan, and that was essential to

enable him to assail Bennett's title, though fraudulently acquired. The report thus shows that the judgment on which the execution sale was founded was void, on the ground that Carter never owned the note, and that the judgment he obtained in the suit to foreclose the naked mortgage was void, for the other reasons already mentioned. There was no offer or attempt to retry a contested question of liability, as in the case at bar, but simply to show the judgment was *void*, for want of jurisdiction of the proper parties and the subject matter. Many other questions are involved in the case.

There are three cases cited from Vermont. In the first (*Warner vs. Perry, 22 Vt. 155*), Woodward, in 1842, conveyed the premises in question to Perry, and afterwards Pelton brought suit against Woodward while he was absent from the State and recovered judgment against him without his knowledge, and three years later recovered judgment on this judgment, and had execution levied on the same property and bid it in, and afterwards conveyed it to defendant. Plaintiff was permitted to prove against defendant's objection that at the time of the recovery of the original judgment and the conveyance, Pelton was indebted to Woodward in a larger amount, no account of which had been taken. It was also proven that Woodward was indebted to the original grantee at the time of the conveyance, and that the conveyance was made in satisfaction of the indebtedness. The Court directed the jury: "That the evidence offered by the plaintiff to disprove the existence of Pelton's debt, or to show claims in favor of Woodward against him, was not admitted for the purpose of a

impeaching the validity of the last judgment recovered by Pelton, but to aid in determining whether Woodward intended to defraud Pelton in conveying the land to plaintiff; that unless Woodward then supposed himself indebted to Pelton upon a settlement of all their dealings, his motives could not be deemed fraudulent as to Pelton; that the deed to the plaintiff being prior to the judgment, the plaintiff could not be concluded by it from showing that Woodward was not in fact indebted to Pelton at the time, and that from the whole evidence the jury were to determine the character of the transaction between plaintiff and Woodward as having been in good frith or fraudulent." This direction was approved by the Supreme Court; but it is suggested that in so far as it allows an alleged debtor's *supposition* as to whether he is indebted or not to control, it would be a dangerous precedent. The second case (*Ingalls vs. Brooks, 29 Vt. 399*), the property was conveyed by a bebtor to the grantee for the express purpose of paying all his debts, and the grantee assumed and agreed to pay them. The grantee paid the particular debt, and afterwards by collusion between the creditor and debtor a judgment was recovered against the grantor on the same claim. In a suit to enforce this judgment against the property conveyed, it is held the grantee could show that he had paid the note before it was put in judgment, and that the judgment was therefore fraudulent as to him. It would be a strange system of jurisprudence under which such evidence could not be received. In the last case (*Boutwell vs. McClure, 30 Vt. 676*), it appears that the note which was put in judgment was given for the

benefit of defendant, and when it was sought to be used for that purpose, the grantee of the property offered to prove these facts, and the trial Court ruled out the testimony. The judgment was properly reversed for this error.

We have thus fully reviewed the decisions cited in the opinion of the trial Court in order that the grounds upon which they are based may clearly and briefly appear to this Court; and we respectfully submit that there is not one in which there was a contest and defense pleaded and a jury trial in a Court of competent jurisdiction as in the case at bar. And it is further submitted that the trend of opinion, even in these cases, is that judgments can only be collaterally attacked where they are void for want of jurisdiction, or where they have been collusively obtained for the purpose of defrauding some third person.

Freeman on Judgments and Bump on Fraudulent Conveyances are also cited. The reference, it is assumed, is to the third edition of former work, and the second edition of the latter; and the text of section 337 of Freeman *seems* to support the contention that a judgment may be collaterally assailed in such a case as this. But if the language is taken literally it does not, for it is this: "It has been said to be a general rule that where a party's rights may be collaterally affected by a judgment which for any cause is erroneous *and* void, but which he can not bring a writ of error to reverse, he may, without reversing it, prove it was erroneous *and* void in any suit in which its validity is brought in question." It will be noticed that it is not said as has been loosely concluded in some cases, that if

the judgment is erroneous *or* void it may be impeached collaterally. If void, there is no question but that it may be shown in any case by anybody whose rights are sought to be affected by it. Refering to this language, the same author, in the fourth edition of his work, published since the decision of the case at bar, says: "This language, while perhaps technically correct, is calculated to mislead by giving the impression that when a judgment is offered in evidence against a third person affected by it when it was entered, the Court in which it is offered will exercise powers similar to those of an appellate tribunal for the purpose of determining whether the Court which entered the judgment acted correctly in all respects, and will refuse to give effect to the judgment if it appears that some error contributed to its rendition. *This is further, we think, than any Court can properly go.* If a judgment is void no doubt it may be collaterally impeached for that reason by a third person injured by its rendition. If it is erroneous, and is also collusive or, if though not collusive, the nominal defendant made no defense because he had no interest to be protected, a third person may sometimes impeach it for error apparent on the face of the record; *but where a real defense was made*, we think a stranger affected by the judgment will not be permitted to impeach it by retrying the cause before another Court for the purpose of convincing it that a different judgment ought to have been entered in the former action." It is submitted that this was done by the trial Court in the case at bar. The same author further says in the same section (337): "Though the party seeking to impeach a

judgment collaterally is a creditor of the defendant, and its enforcement will therefore operate prejudicially to him, yet he can not assail it when it is not collusive, on the ground that the defendant had defenses which he might have asserted, or that in the transaction between the plaintiff and defendant out of which the judgment grew, the former overreached the latter." Bump on Fraudulent Conveyances also contains general expressions which give apparent support to the judgment of the Court in this case, but after them follows this qualifying statement: "The right to inquire into the grounds of the judgment, however, does not extend so far as to give the right to retry an issue which has been litigated and determined between the parties in accordance with the forms and principles of law without fraud or collusion." (P. 559.)

This Court has decided the principle in controversy here, though probably not on a precisely similar state of facts. In *Comstock vs. Crawford, 3 Wall. 396*, it appears that defendant purchased the property in question at an administrator's sale in Wisconsin, which was irregularly and improperly ordered, and afterwards the heirs of decedent brought suit to recover the property. It was sought in that suit to impeach the judgment of the Probate Court, ordering the sale, and this Court, by FIELD, Justice, say: "It is well settled, that when the jurisdiction of a Court of limited and special authority appears upon the face of the proceedings, its action cannot be collaterally attacked for mere error or irregularity. The jurisdiction appearing, the same presumption of law arises that it was rightfully exercised, as prevails with reference to

the action of a Court of superior and general authority." (P. 403.) The trial Court in that case refused to receive testimony offered for the purpose of proving collusion and fraud between the plaintiff, purchaser at the sale, and the administrator; and yet the judgment in favor of plaintiff was affirmed by this Court. *Michaels vs. Post, 22 Wall. 398*, is a voluminous case, arising under the Bankrupt Act. It seems that one creditor was fraudulently induced by another to release his debt against a common debtor, and the creditor so securing the release afterwards acquired the debtor's property. The deceived creditor then petitioned that the debtor be declared a bankrupt, which was done. In an action by the assignee to recover the property from the creditor who had possessed himself of it, the latter sought to impeach the adjudiaction of bankruptcy, which was by decree *pro confesso*, on the ground that the bankrupt was not indebted to the petitioner, and that his petition and the decree were fraudulent. The decree was in favor of the assignee, and was affirmed by this Court on appeal. The Court, by Justice CLIFFORD, say: "By the Act of Congress the jurisdiction to adjudge such insolvent debtors as are described in the 39th section of the act to be bankrupts is vested in the District Court, and it follows that such a judgment is entitled to the same verity, and is no more liable to be impeached collaterally than any other judgment or decree rendered by Courts possessing general jurisdiction, which of itself shows that the case before the Court is controlled by the general rule that when it appears that the Court had jurisdiction of the subject matter, and that the defendant was

duly served with process, or voluntarily appeared and made defense, the judgment is conclusive, and is not open to inquiry upon the merits." (P. 428.) To the same effect is *Chapman vs. Brewer, 114 U. S. 158.*

In *Avegno vs. Schmidt, 113 U. S. 293,* it is again declared by this Court, Justice Woods delivering the opinion of the Court, that: "The decree of a Court of competent jurisdiction cannot be collaterally attacked by averring and proving that there was a good defense to the suit, if the defendant had chosen to make it."

Herron vs. Dater, 120 U. S. 464, involves, as does *Comstock vs. Crawford, supra,* a sale of lands by a Probate Court. This Court, answering an objection to the judgment, say: "This objection was that it appeared from the face of the petition for the sale of the real estate of the decedent, that the debts to pay which it was alleged that the sale was necessary were barred by the statute of limitations, and that, as a consequence, the Orphan's Court had no jurisdiction to make the order of sale." After reciting the steps taken in the Orphan's Court, this Court further say: "It is scarcely necessary to cite authority in support of the proposition that the order, judgment and decree of the Orphan's Court, in a case where it had jurisdiction of the subject matter, cannot be impeached collaterally."

The Court considers this question on appeal from a decree of the Supreme Court of the Territory in *Tilton et al. vs. Cofield et al. 93 U. S. 163,* which was a *direct proceeding by third persons,* who had acquired the property, without actual notice and without fraudulent intent, pending the suit, to im-

peach a judgment in attachment under which the property in question had been sold. Under circumstances much more strongly appealing to a Court of equity than in the case at bar, this Court, reversing the judgment of the lower Court, say: "Nor can a Court of equity turn itself into a Court of review, and correct the errors of a Court of law. This is alien to its jurisdiction and beyond the sphere of its power and duties." It is further said: "Each is independent of the other. They act on different principles, and, except where some recognized ground of equity jurisdiction is concerned, are each alike bound to recognize the validity and conclusiveness of the record of what the other has done."

In the recent case of *Griswold vs. Hazard, 141 U. S. 260*, the doctrine is re-iterated. The facts calling for the declaration sufficiently appear in the last paragraph, but one, of the prevailing opinion on page 290: "The demurrer to the bill in case No. 52 was also properly sustained. In that case the validity of the proceedings in the Supreme Court of Rhode Island by Hazard against Durant and others was assailed upon the ground that the bill in that suit did not sufficiently show that any effort had been made by Hazard, the plaintiff therein, and who sued as a stockholder, to procure corporate action against Durant by the Credit Mobilier, of America. It is only necessary to say that this ground presents only a question of mere error in the judgment of the State Court and does not affect its jurisdiction."

There are numerous decisions of State Courts on this question, many of them very recent, a few of which we cite to your Honors if you shall desire

further to pursue the inquiry.

Buckmaster vs. Curtis, 3 Scam. 104.
Hoffman vs. Coster, 2 Whart. 471-2.
Approved in 102 Pa. St. 86.
McAlpine vs. Sweetzer, 76 Ind. 78.
Hislop vs Hoover, 68 N. C. 141, 147.

It is submitted that both the authority of courts and the authenticity and sanctity of their judgments depend upon their immunity from collateral impeachment, except for want of jurisdiction or collusion between the parties for some fraudulent purpose affecting the rights of the party attacking them.

IV.

But the trial Court having held, properly or improperly, the appellant's judgment against Samuel H. Thatcher open to collateral impeachment by his fraudulent grantee of the property in question, it is proper to inquire whether the grounds upon which the judgment is criticised, if not annulled, are tenable.

We have already suggested the objection that at the time this attempted impeachment for alleged fraud of the judgment under which appellant claims the property in question, a direct proceeding to set it aside would have been barred under the Colorado statute of limitations on this subject; and if a direct proceeding could not be maintained for that purpose by the defendant in the judgment, it

would seem to require no argument to prove that a collateral attack having the same effect should not be permitted by appellee. We renew this objection here without further argument or citation of authority.

It is not an easy matter to determine from the opinion of the learned judge who determined the case below, what fact or facts lying behind the judgment most influenced his judgment, as many criticisms are indulged in. It will hardly be claimed, we apprehend, that all these criticisms are grounds upon which the judgment in law or in equity should be impeached or invalidated. It is respectfully submitted that, assuming that the judgment is open for examination for error or fraud, to the same extent as if this were an appeal by the defendant in the judgment, there is no ground upon which a reversal of the judgment could be predicated. The opinion from folios 406 to 408 is devoted to a recital of the facts which appear in the record, as to the transactions which lie back of the judgment, the manner in which the note was secured, the rate of interest it carried, the payments upon it the suit in attachment, the trial of the cause, the amount of the recovery and the attempts made by the plaintiff in the judgment to collect it. Folios 408 to 412 of the opinion are devoted to the discussion of the question whether appellee is concluded by the judgment against his brother or whether he may collaterally impeach it.

The fact behind the judgment to which the learned Judge seems to attach the most importance is the rate of interest—five per cent. per month—which the note carried. It is conceded in the

opinion that it may be legal, provided there be no usury law in the State of Colorado. There is no claim that there is such a law. The rate of interest in that State has always been conventional. Where no rate was named, the rate, until 1891, was ten per cent., since which time it has been eight per cent. But at all times, by special contract, any rate agreed to be paid was legal. Section 3 of the General Laws of Colorado 1877 provides as follows: "The parties to any bond, bill, promissory note or other instrument of writing may stipulate therein for the payment of a greater or higher rate of interest than ten per cent. per annum, and such stipulation contained in any such writing may be enforced *in any Court of law or equity.*" It must be that the attention of the trial Judge was not called to this provision of the statute. Certainly the statute of the State of Colorado on this subject is as binding upon the Federal Court sitting in that district as upon the State Courts, and if we do not misinterpret the opinion of the learned trial Judge, he declares the rate of interest expressly contracted to be paid on the note under consideration not only to be "inequitable," but the contract "extortionate," and the advantages secured under it "unconscionable." Certainly this language would not have been intentionally applied to an obligation which the laws of the State, where it was made and intended to be enforced, and where its enforcement was sought, declare shall be enforcible both in Courts of law and in Courts of equity. The statute ought to be conclusive on the subject. But, we submit, other considerations are quite as persuasive. The second amended answer on this subject alleges

that at the time this note was given—November, 1875—the current rate of interest did not exceed one and one-half per cent. per month in Denver. There was no attempt to prove what the usual or current rate was, though two or three bankers and several real estate brokers, were examined as witnesses on other questions; and for aught that appears in the record, five per cent. per month was a common or usual rate. But the rate named in the pleading must have reference to commercial loans at the banks. It appears that the note of Mrs. McCormick to Samuel H. Thatcher, amply secured by trust deed upon real estate, as the Court finds, bore twenty per cent. per annum. It could scarcely be said that there was a current rate for loans such as appellant made to Zella Glenmore, the proprietress of a bagnio, secured to be paid principally on the furniture used in her place. The failure to make any proof as to what would have been a reasonable rate on such a loan at that time, or the usual rate for loans secured by chattel security, may be taken as an admission that no testimony could be produced against the reasonableness of the rate. Independently of the statute, or if there were no such statute as we have cited, the usual or current rates a Court of equity, even, should not declare unconscionable. Eighteen per cent. on a loan for a year in New York or Boston would be regarded as a ruinous rate. What is a reasonable or oppressive rate is a relative question. A rate highly satisfactory to the borrower in one place might be regarded as outrageous in another. It is probably safe to say that to-day, and at no time since this loan was made, could a borrower of Zella Glenmore's

class, offering similar security, secure a loan on more favorable terms in Denver. Its hazardous, not to say desperate character is illustrated by the experience the lender has had in his expensive and so far fruitless attempts to collect it.

Counting the $1,519.43, the net proceeds of the sale of the furniture, and the proceeds of the sale of the Douglas county land, $253.10, and the $910 paid on account of interest during the year and a half from the giving of the note to the date of the judgment, the trial Court says appellant was paid nearly the original loan. But in this statement no account of interest is taken. The trial Court evidently proceeded upon the principle that a Court of equity might freelly declare the rate of interest agreed to be paid unreasonable; but even under such a ruling appellant would be entitled to some rate of interest. And if the contract made should not control, what rate would a Court of equity name as a reasonable rate? There is no testimony as to what a reasonable rate would have been for such a loan with such security and risks. The McCormick-Thatcher note, well secured it is said, bore twenty per cent. Supposing there were no statute binding on the parties and the Court, and it were simply a question for a Court of equity, what rate would the Court allow? Certainly appellant would not be limited to ten per cent, as if no rate at all had been named in the note. Will a court of equity under such circumstances substitute a contract for the one made by the parties, especially after theirs has become merged in a judgment?

It is said in the opinion that appellant took advantage of the situation of Zella Glenmore, who

"could not go into the money market and borrow on the same terms as others." There is no evidence that he bore to her any confidential or fiduciary relation, or that in borrowing the money she dealt with him otherwise than at arm's length, being under no sort of duress or restraint. The money was not even borrowed to pay a debt, for which she was being pressed, but the inference from the facts disclosed in the record is that she had an opportunity to buy property deemed to be worth $6,000, for less than half its value. But we submit that if her profession or character was such as barred her from the ordinary channels of commercial credit, and she could not command the confidence or give the security there exacted, appellant is not fairly subject to denunciation for accepting such a questionable debtor and doubtful security, and lending her the money she sought at a legal rate of interest, which she was willing, and, it would appear, entirely satisfied to pay. The only exceptional or remarkable feature of this loan and rate of interest is the fact that it was continued for a year. Such loans for a few months are not at all unusual. And yet, this note the makers had the right to pay at any time, for it is payable on or before one year from date. (Rec. p. 172, Ex. 12.)

The business of the pawn broker or lender of money on chattles, may not be as respectable as that of the banker (before the recent silver discussion in Congress, we should probably add); but we venture to suggest that he relieves and tides many almost desperate people over perilous rapids in life, whom the banker would unhesitatingly leave to their dire fate because their names could not be

found well rated in commercial reports, or, like Jean val Jean, could not affort to tell their names. And yet they have a right to life, food and shelter.

The learned trial judge also mentions as a ground of criticism, if not a reason for his decision, that the chattel property was seized by appellant "as soon, if not sooner than the debt matures, sweeps the property off to an auction house, where, as every one knows it would be, it was sold at an enormous sacrifice." The mortgage of this furniture contains the usual provision that if default shall be made in the monthly payments of interest, or if the holder shall at any time have good grounds to fear the loss of his claim, he may take possession of the property and dispose of it for cash, etc. The evidence on the trial of the case in the District Court was that before the suit was brought there had been only six months interest and $100 on the seventh month paid—leaving the interest more than four months in arrears. (Rec. p. 232). Besides, unless the holder of chattel mortgage security take immediate possession on the maturity of the debt, his lien as against other creditors is lost. As to the place of sale, where, may we ask, should it have been sold, and why should it not have been removed? Appellant was compelled, in order to avoid loss of his lien, to take possession. Was it his duty to go into the house where it was kept and jointly occupy the house and furniture with the mortgagor or expel her from the house in order to take the requisite exclusive possession? There would have been, if the Court will allow the suggestion, other than legal embarrassments connected with the joint possession of the furniture in

the house of the proprietress of such an establishment. Certainly, an auction house was not an improper place to expose the property for sale. Who would have gone to a bagnio to buy furniture? And what would the few who might have gone bid for it? The removal and sale at an auction house, we submit, were clearly in the interest of the debtor. The net proceeds, after paying the expenses of both removal and sale, were more than one-fourth of the high estimate put upon it when the furniture was purchased a year before, and more than half what it cost at that time—a much larger per cent. than second-hand furniture usually brings at forced sales. It is alleged in the second amended answer that appellant became the purchaser of this property, but there is no evidence that he bid on a single article, though the auctioneer, Wilson, who sold it, was on the witness stand.

The fact is mentioned that suit was begun for the full amount of the note, and that, when reached, the case was pressed for trial when counsel for appellant's brother was intoxicated. It will hardly be claimed that appellant is responsible for either of these derelictions, if they be such. If the proper credits were made or allowed at the trial, certainly no fault can be found with either attorney or client. It is to be remembered that at the time the suit was instituted no payments had been made except about seven months' interest. The furniture and Douglas county land were sold afterwards, but before the trial. But it is respectfully submitted that it is not apparent upon which principle appellant, as plaintiff in his suit in the District Court, or his counsel can be held to any degree of accountability

or culpability for the drunkenness of defendant's counsel. It is not pretended by appellee that either caused or contributed to it; nor does it appear that either insisted the case should be tried when it was reached. If any wrong was committed by the trial of the case at the particular time and under the circumstances, the responsibility should rest with Thatcher's counsel or the Court. But inasmuch as a jury trial occupying parts of two days, under pleas setting up every conceivable defense, was had, and counsel for defendant seems to have cross-examined plaintiff intelligently on all the questions as to which he testified, and no motion for a new trial was interposed after verdict, when counsel was probably sober, it must be presumed that at the time neither Thatcher nor his counsel felt that any wrong had been done which needed to be remedied. (See record, p. 139, fol. 122; pp. 231-233, 250-253, where a copy of the pleas, trial order, motion for judgment on verdict and transcript of plaintiff's testimony at the trial in District Court may be found.)

It is alleged in the second amended answer that appellant caused a trust deed, given by Samuel H. Thatcher, on 320 acres of land in Douglas county, to secure his and Zella Glenmore's note, to be foreclosed, and that the sale was so secretly conducted, without notice to said Thatcher, that appellant was enabled to bid in the land for $320, when it was, in fact, worth $3,000. There is not a word of testimony in the record even tending to prove this allegation, except that of appellant, that he bid in the land at $320, which, after deducting expenses of sale and taxes, left something less than $300 to

apply on the note. This transaction is mentioned in the opinion of the Court in these terms: "Not content with that (the sale of the furniture), he *appropriates* 320 acres of the debtor's land." Some opprobrium, it would seem, is intended by this reference; but there is nothing in the evidence to justify it, we submit. If the lands so sold and lawfully acquired by appellant had, in fact, been worth anything in excess of what they were bid in at, it is safe to assume that evidence of it would have been produced. Certainly nothing illegal or inequitable attaches to this transaction. The net amount of this sale and purchase was credited on the note at the time judgment was taken. (Rec. p. 232.)

It is further said that appellant by "attachment proceedings and sale, and with a singular and suspidious omission in the advertisement obtains the title to a note fully secured, amounting, with interest, to more than half of the original loan, and enforcing thereafter the trust deed, is now the owner of most valuable property." In this connection reference should again be had to the allegations of the second amended answer, where it is said that the sale of the McCormick note was so secretly conducted, that Thatcher had no notice of it, whereby plaintiff was enabled to bid without opposition and purchased the note for 880. The under sheriff, W. A. Smith, gave his testimony in this suit, and proves that the note was duly advertised in the Denver Daily Times for ten consecutive days, and a copy of the advertisement shows that the note was set out in *haec verba* in the advertisement. (Rec. pp. 243, 244.) And he further shows that he had no knowledge at the time of the value of the note, or that

it was secured by trust deed. Nor is there any evidence that appellant knew this at the time of the advertisement and sale. But whether he did or not, it is submitted he is not responsible for the character of the sheriff's advertisement of the sale. It is not the duty of execution creditors to superintend sheriff's advertisements. A statement in the advertisement that the note was secured by trust deed, even if known to the sheriff or the creditor, was not a necessary part of the advertisement. It was an extrinsic fact bearing on its value, which it was no more the sheriff's duty to announce than it was to speak of the extent of Mrs. McCormick's estate, if she had one, or of her character, or to state in his advertisement of a city lot for sale that it had a ten-story building upon it and commanded a rental of $10,000 a year. Those who think of bidding at execution sales investigate for themselves the value of the property to be sold and the character of title; and in this case, if any one other than the execution creditor thought of bidding he would naturally have gone to the maker of the note for all needed information as to its value. Indeed, statements of supposed facts by the sheriff, bearing on the value of the property to be sold under execution, other than a description of it as a means of identification, would be improper as a representation which would, in many cases, invalidate the sale, and relieve purchasers from the burden of the maxim *caveat emptor*. The note in question was long past due at the time of sale, the validity of a sheriff's sale of a promissory note was by no means certain, and any one who purchased it took the risk of its having been wholly or partly paid, and of

there being a defense to it. There was and is no valuation or appraisement law in Colorado requiring property sold at judicial sale to bring any particular per cent. of its value, as in many states, and the highest bidder becomes entitled to the property. We submit that so far as an execution sale of the note in question could confer title, appellant legally and regularly acquired it, and he was neither in law or equity obliged to credit his execution with any greater sum than the amount bid for it. Having afterwards by reason of his ownership acquired the property conveyed to David H. Moffatt to secure its payment, he rightly became the owner of that, subject to such liens for taxes and other infirmities in the title as might exist. And he was likewise entitled, as of his own legal and equitable estate, to any appreciation in its value which had accrued to him as the owner of it, between the date of his purchase, January 1879, and the filing of the second amended answer in March, 1883, and the taking of the proofs under it, when its value had been more than quadrupled by the lapse of time.

In this connection it is proper to refer to appellant's ninth assignment of error, which is directed against the omission of the trial court to put appellee under some condition in respect to setting up a claim to the land bid in under the Moffatt-McCormick trust deed, though "by the said record and proceedings it doth appear that the said Lewis C. Thatcher was and is claiming title to the said other premises adverse to said Joseph Gottlieb." The statement that this fact appears in the record is a mistake. It is a fact, however, and we may properly refer to the case of *Gottlieb vs. Thatcher, 51 Fed. R.*

373, wherein the Circuit Court of Appeals for the Eighth Circuit renders a decision in favor of appellant. It there appears that soon after the decision in this suit, appellee began an action to recover that property, and prevailed in two trials in the lower court. And this he did after having set up in this suit the purchase of the McCormick note by appellant, and the acquisition thereunder of the property deeded to a trustee to secure it, as a reason why in equity he should not have the fraudulent conveyance complained of in his bill set aside, and thus secured a decision in his favor partly, if not mainly, on these grounds. It will further appear, by reference to the decision in the Federal Reporter that appellant was awarded judgment on the ground that he had paid the taxes on that tract of land for ten years under claim and color of title made in good faith, according to the Colorado statute; both the trial and appellate Court ignoring the title claimed by appellant under the trustee's sale. It further appears by that decision that appellee claims under a conveyance of that property, dated February 5, 1878, made to him in payment of the McCormick note — nearly a year before the trustee's sale to appellant, and several months after it is alleged in the second amended answer that appellant had acquired the ownership of that note at sheriff's sale, which was September 19, 1877. Without impropriety, we suppose, it may be further stated that appellee has not yet desisted from his attempt to take from appellant this tract of land; for after the decision by the Circuit Court of Appeals he paid the costs and took a statutory new trial, and the cause is now pending on a second writ of error in that Court.

One of the conveyances sought to be set aside in this suit as fraudulent and void, is that made at sheriff's sale under the Kaucher judgment. The sheriff's sale of the property in question to appellant, under his judgment, was made August 15, 1877, and his deed given July 19, 1878; the sheriff's sale of the same property under the Kaucher judgment was made February 20, 1878, and the deed given to appellee November 25, 1878. The learned trial judge treats this last sale as an actual appropriation of the property in question to the payment of the Kaucher judgment, which was prior in date to that of appellant. It seems to be conceded in the opinion that the lien of the Kaucher judgment had been lost before the levy and sale under it. If it had been, then the levy can afford no more basis for a title than if the judgment had been recovered subsequent to appellant's. If the Kaucher judgment was not a prior lien, certainly the sale of property already sold under appellant's judgment could not give title to the land, and would be a cloud on appellant's title previously acquired. Had the Kaucher judgment been a lien upon the land from the time of the recovery to the date of the sale under it, and a stranger had bought it at the sale and the title had been given to him, and his money had satisfied the judgment, then it might properly be said that the land had paid the judgment. But in this case it is shown that Samuel H. Thatcher's money paid the judgment. The trial judge, in his opinion on this point says: "Whatever may have been the motives of the two brothers, *or by which one in fact the money to pay for the land was advanced* the land was sold, the money was advanced

by one or the other, and the defendant became the purchaser." We respectfully submit, that it can not be the law, that a judgment debtor, seeking to defraud a particular judgment creditor, may furnish the money to pay a bid made at a sheriff's sale under a prior judgment, and have the property so sold and bid off by him conveyed to a previous fraudulent grantee, and thus defeat the title already acquired to the same property under a subsequently recovered judgment, but prior levy and sale, and thus deprive the creditor of the means of satisfying his judgment. A fraud may be as readily perpetrated by resort to ficticious judgments and the wrongful use of the process of Courts as in any other manner. That Samuel H. Thatcher conducted the sale under the Kaucher judgment, bid in the property and paid his bid with his own money, and had the conveyance made to appellee, we think we have already demonstrated. The pretense that he sent money from St. Louis to pay for the property, no Court, under the proofs, could entertain for a moment. It appears by the evidence of one of Samuel H. Thatcher's sureties in his appeal to the Supreme Court of the Territory, already referred to, that he and his co-surity had in their custody at the time the Kaucher judgment was affirmed by this Court, securities deposited with them presumably when the bond was made, which they gave him notice they would sell and apply the proceeds to the satisfaction of the judgment, and they were told he would pay it. (Rec. p. 55, fol. 88.) What the character or nature of these securities was does not appear, but it is manifest they had been set apart for the payment of the Kaucher judgment, and that they, or the money realized for

them, Samuel H. Thatcher, the judgment defendant, applied to the payment of that debt, and the property was deeded to appellant in furtherance and consummation of his original voluntary and fraudulent conveyance of the property, November 13, 1876. We have already reviewed the evidence in the record on this question, citing the Court to the particular pages and folios, where it is to be found; and we submit that after examining it but one opinion can find a lodgment in the mind of this Court. So we submit, that even if the Kaucher judgment had been a lien upon the property, if Samuel H. Thatcher bid it in at the sale, furnished the money to pay that judgment and had the property deeded to appellee, it was such a fraud and concealment of his property from other creditors as to render it void in a Court of equity. If the property in question was liable to first pay the Kaucher judgment because it was a prior lien and had been so appropriated, certainly appellant's judgment should have been satisfied out of the securities deposited with Thatcher's bondsmen. But both, by the fraudulent devices of Samuel H. Thatcher, with the co-operation of appellee, have been placed beyond appellant's reach or the process of the Court, provided the sale to appellee shall be sustained.

If the view we have presented should find favor with the Court, it is a matter of no consequence whether the judgment in favor of Kaucher was a lien upon the property at the time of the levy and sale under it or not. But it is submitted that it cannot be held to have been a lien at the time, and if it was not, the prior levy and sale under appel-

lant's judgment should, of course, be held to take precedence of it without reference to the intention of the Thatcher brothers in the sale under it or who furnished the money. The statute of Colorado on this subject at the time, after providing what shall be subject to execution, is as follows: "And the said judgment shall be a lien on this real property of the judgment debtor not exempt from execution, in the county, owned by him at the time or which he may afterwards acquire, until said lien expires. The lien shall continue for six years from the entry of the judgment, unless the judgment shall be previously satisfied; *Provided*, that execution be issued at any time within one year on such judgment; and from and after the said six years the same shall cease to be a lien on any real estate as against a *bona fide* purchaser or subsequent incumbrance by mortgage, judgment or otherwise; *Provided*, that in case the party in whose favor any such judgment shall have been entered shall be restrained by injunction out of Chancery or order of any Judge or Court, either from issuing execution or selling thereon the time which he shall be so restrained shall not be deemed or considered as any part of the said six years." (Gen. Laws 1877, chap. 53, sec. 1.) The chapter of which the above section is a part was enacted in 1862; and in 1874 it was amended by providing the additional requirement that an abstract of the judgment, at the request of plaintiff, should be made out by the Clerk of the Court, rendering the judgment, which might be filed for record with the Recorder, "and from the date of such filing, and not before, such judgment shall be a lien upon all the real estate of the

defendant in the county where such abstract may be so recorded, and not until such abstract shall be so filed, nor in any county other than the one in which so filed." (Laws 1874, p. 168.) This abstract of the Kaucher judgment, appears by the record to have been filed; but no execution was ever issued on the judgment, which was recovered in May, 1874, until January 29, 1878. (Rec. p. 156, Ex. N.)

The lien of a judgment is the creature of statute. Under the section of the Colorado statute first quoted, the issuing of an execution within a year is a prerequisite to the lien attaching. There is express provision as to what shall excuse the failure to issue execution; and that is, where the plaintiff may be "restrained by injunction out of Chancery or order of any Judge or Court either from issuing execution or selling thereon the time which he shall be so restrained, shall not be deemed or considered as any part of the six years." *Expressio unius est exclusio alterius.* This leaves no room for a Court to say that an appeal shall supply the place of an execution, and is tantamount to a declaration that a party whose judgment is secured by appeal shall not at the same time have a lien; and there is reason and justice in such a provision. All of the judgment debtor's real estate should not be clouded by a lien during the long period of appeal to the Supreme Court of the Territory, and from that to this Court from a judgment against him. When he gave a bond on appeal to the Supreme Court of the Territory, securing the payment of the judgment, it was all the security Kaucher could reasonably ask. But in addition to this, from the time the judgment was affirmed by the Supreme Court of the

Territory in July, 1875, to the time of the affirmance by this Court in January, 1878, there appears in the record no legal obstacle to the issuing of execution. With a judgment and the right to an execution during that time and no execution issued, surely there could be no lien. It was during this interval that appellant attached the property, recovered his judgment, and sold and bought under it. There is an attempt made in the record to prove that when the case was brought to this Court by writ of error, a *supercedeas* bond was given, but it failed. A copy of the bond given on appeal to the Territorial Supreme Court and the testimony of one of the sureties on it are in the record. (Rec. pp. 44, 163, Ex. 6.) No copy of a *supercedeas* bond or the testimony of any surety on such a bond was produced, only the depositions of A. C. Phelps and Bela M. Hughes, of counsel for Samuel H. Thatcher. (Rec. pp. 255, 265.) The former thinks a *supercedeas* bond was probably given when the judgment was brought to this Court for review, because he thinks the judgment could have been collected during that time, and Kaucher's attorneys were anxious to collect it. The other thinks a *supercedeas* bond was given; but it is only his impression. The testimony of both witnesses was received under objection, that the bond was the best evidence, and there was no attempt to account for the loss or destruction of it if it ever existed.

This can only become a material question in the event the Court shall determine that appellee was actually and in good faith the purchaser at the sale under the Kaucher judgment, and that the

money paid in satisfaction of the bid made was his own. But if the Court shall deem it necessary to examine the question, the subjoined authorities will be found to sustain the propositions to which they are cited:

Judgment liens being the creature of statute, they exist only where the statute has been strictly complied with.

Isaacs vs. Swift, 10 Cal. 71.
Rogers vs. Druffel, 46 Ib. 654.
In re Boyd, 4 Sawy. 268, 270-1.
Buchan vs. Sumner, 2 Barb. Ch. 193-7.

Any proceeding which secures the payment of a judgment discharges its lien.

Campbell vs. Spence, 4 Ala. 543.
Bartlett vs. Gale, 6 Ib. 605.
Conway vs. Jewett, 3 Yerg. 481.
Mitchell vs. Anderson, 1 Hill (S. C.) 69.
Russell vs. McCampbell, 29 Tex. 38.

A junior judgment creditor by superior diligence first subjecting the property of his debtor fraudulently conveyed to his judgment, acquires a preference over a senior judgment.

Freeman on Judgt. 4th Ed. § 350.
Gorden vs. Lowell, 21 Me. 257.
Boyle vs. Maroney, 72 Iowa, 70.

A suspension of a judgment or execution lien renders it subject to intervening rights acquired pending the suspension.

Freeman on Judgt. § § 379-81.
King vs. Harris, 34 N. Y. 336.
Oley vs. Moore, 17 Ala. 280.
Hickok vs. Coates, 2 Wend. 419.
Rockhill vs. Hanna, 15 How. 189.

The Act of Congress prescribing the terms and conditions upon which the execution of judgments may be superceded, is strictly construed, and must be closely followed.

Smith vs. Hogan, 11 How. 294.
Silver vs. Ladd, 6 Wall. 440.
Doyle vs. Wisconsin, 94 U. S. 50.
Kountz vs. Omaha Hotel Co. 107 Ib. 378.

Conceding, for the sake of the argument, which can hardly be done even hypothetically, that appellee was an actual purchaser in good faith of the property in question under the Kaucher execution sale, his title in law is subject and inferior to that of appellant.

We do not know to what extent the evidence was analyzed or the law discussed to the trial Court, but it must be that some phases of the case escaped his Honor's attention by neglect of counsel or otherwise. The record is quite volumnous, and it is not the practice, we think, of trial judges to examine the whole mass of the testimony for themselves, but to consider such portions of it as their attention may be particularly directed to by counsel. At any rate, we think a careful review of the case will satisfy this Court and every member of it, that the decree appealed from is erroneous and inequitable. If it should be affirmed, and appellant should ultimately prevail in his suit to recover the twenty acre tract, which appellant supposed he acquired under the McCormick trust deed, and which the opinion of the lower Court under the second amended answer, holds he did acquire, certainly a gross wrong will be inflicted. For in that event his judgment for $2,171 recovered over sixteen years ago

will not only remain entirely unsatisfied, with no possibility of realizing a dollar on it, but there would be entailed upon him the loss of all the costs and expenses of the three suits, one of them already five times tried, together with the taxes paid on the McCormick tract since 1879, aggregating thousands of dollars. Not only this, but with due respect for the learned judge who heard this case at the Circuit and for his learning, the affirmance of this decree, it seems to us, would be equivalent to a declaration by this Court that a debtor, desiring to defraud his crdditor may make a voluntary conveyance to an intimate friend or relative in secret trust for himself, and when the creditor seeks to enforce his judgment agrinst the property conveyed, the debtor may, in the name of his voluntary grantee open and retry the case in equity and nullify his creditor's judgment, and thus consummate his original fraud.

It is most respectfully submitted, that for the reasons given the judgment should be reversed and a decree directed to be entered for appellant in accordance with the prayer of his bill.

E. T. WELLS,

R. T. McNEAL,

Solicitors for Appellant.

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IN THE

Supreme Court

OF THE

United States.

JOSEPH GOTTLIEB, *Appellant.*

vs.

LEWIS C. THATCHER, *Appellee.*

Appeal from the Circuit Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT FOR APPELLEE.

J. WARNER MILLS,
HENRY C. DILLON,
Solicitors for Appellee.

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Appeal from the Circuit Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT FOR APPELLEE.

GENERAL REVIEW.

We begin this argument with but sixteen pages of appellant's brief in our hands. But as but one day is now left us for the preparation and printing of our own brief, before we must start to be in attendance at the oral hearing—our argument cannot follow very closely and can but imperfectly anticipate, the various points on which appellant will rely for a reversal.

The original bill was filed Feb. 18, 1879. What this bill was we do not know, it is not set out in the record. It fell before a general demurrer Nov. 20, 1879. (Rec. p. 2) An amended bill was afterwards filed, which is not preserved in the record, and it also fell before a general demurrer May 9, 1881 (Rec. pp. 3-4). May 12th, 1881, (not May, 1879, as stated on p. 1 of appellant's brief), the *second* amended bill of Mr. Gottlieb was filed (Rec. p. 4). How the cause of action stated in this bill differed from that in the two others does not appear in the record.

The demurrer interposed to this bill was overruled July 11, 1881 (Rec. p. 8), and on the 1st day of the following August, the answer of the defendant was filed. The answer admitted that defendant claimed title in fee to the lands in controversy and alleged that he does have title thereto, and is in peaceable possession thereof, under and by virtue of two several sources of title—one, a warrantee deed from his brother Samuel H. Thatcher, dated Nov. 13, 1876; and the other a sheriff's deed executed as the result of an execution sale of the lands in controversy, under a judgment in the district Court of Arapahoe County, Colorado, in the case of Samuel Koucher vs. Samuel H. Thatcher, which said judgment became a lien upon said lands on the 18th of June, 1874, and execution on which was taken out Jan. 29, 1878. The said answer also denied all fraud or intent to hinder or delay creditors and put in issue the existence and procurement of the judgment set out in the bill, of $2,171, alleged to have been got by Gottlieb vs. Samuel H. Thatcher, in the District Court of Arapahoe County, Colorado, on the 23d day of July, 1877, and also the sheriff's deed, by and through which said judgment the said Gottlieb claimed title to said lands.

October 7, 1881, a general replication was filed by complainant. (Rec. p. 11.)

But it appears that Mr. Gottlieb was not satisfied with the issues as above made up, and, on the fourth day of May, 1882, he moved "*to again amend his bill of complaint*," and the "defendant consenting thereto," it was ordered "that the said motion be granted." (Rec. p. 12.) What this amendment was the record fails to show.

On the thirteenth of June, 1882, the case was referred to John W. Webster, an examiner, to take the testimony of both parties and report on the first day of the following October term of the court. (Rec. pp. 12-13.)

September 30, 1882, the said examiner filed his report (Rec. p. 210), and December 22d, following, the cause was submitted and taken under advisement. (Rec. pp. 210-211.) It does not appear from the record that there was any argument on either side. On the fifteenth of January, 1883, both complainant and defendant being present by counsel, it is ordered by the Court, "upon motion of defendant, and *for good and sufficient reasons to the Court appearing*, that the defendant have leave to amend his answer herein within ten days from this day as he shall be advised." (Rec. p. 211.)

The amended answer filed pursuant to the above order does not appear in the record, the *exceptions* thereto filed by complainant having been sustained on March 2, 1883; "and thereupon, on motion of the said defendant, *the said complainant now here in open court consenting thereto*, it is ordered by the court that the said defendant may again amend his answer to the second amended bill of complaint herein within twenty (20) days from this day as he shall be advised." (Rec. p. 211.) Accordingly, on the twenty-first day of March, 1883, this second amended answer, above allowed, was duly filed. (Rec. p. 211, etc.) This answer contains all that was in the original answer, and in addition rehearses a long train of grievances as to Gottlieb's unconscionable and inequitable

conduct throughout the entire transaction, tending to show that he comes into court with unclean hands, and for that reason, among others, he must bring upon himself the frown of the chancellor. Under the former answer, as we have seen, the existence and procurement of the Gottlieb judgment for $2,171, against Samuel H. Thatcher, is put in issue, and that issue is enlarged in this second amended answer by directly challenging the integrity of said judgment and showing that it was erroneous and fraudulently procured and taken for a much larger sum than could possibly have been due, and while Sam Thatcher's counsel was too drunk to properly attend to the case, etc., and in the face of the fact that complainant had been more than paid off, and that he had ruthlessly slaughtered valuable securities, and had made himself a trespasser chargeable with the full market value of the chattel mortgage property worth $6,000, by seizing and selling the same before the maturity of his note signed by Sam Thatcher and Zella Glenmore.

On the 28th day of June, 1883, the complainant filed a general replication to the above mentioned second amended answer.

The testimony taken under the issues as formulated above is to be found on page 219 to 269 of the record. Nothing seems to have been done by either side for nearly four years, as the first testimony taken after the above change in the pleadings is dated December 4, 1886 (Rec. p. 220), and the last testimony was filed January 7, 1888 (Rec. p. 269).

The case came up for final hearing before His Honor, Judge Brewer, now a member of this Honorable Supreme Court and on the 21st day of March, 1888, he filed a clear and convincing opinion and directed a decree to go dismissing complainant's bill. The opinion is printed in full

at pages 269 to 275 of the record. It may also be found in *Gottlieb vs. Thatcher*, 34 Fed. Rep. 435.

I.

THE SECOND AMENDED ANSWER WAS PROPERLY ALLOWED AND FILED.

The assignment of error that we will first briefly discuss is the *third*, to the effect that the Court erred in allowing the above mentioned *second* amended answer to be filed after the case was taken under advisement. (Rec. p. 284).

It will be noted in our general review above that prior to the allowance of this *second* amended answer there was a *first* amended answer filed, to which complainant's exceptions were sustained. Counsel for Mr. Gottlieb did not object in any way to the reopening of the issues and the filing of this *first* amended answer. Nor has he now assigned any error as to this allowance, yet it stands at the threshhold of his present complaint, and was the very point at which the Court delivered the case from under advisement, for new and further pleading on the part of the defendant. If this was not error, and the appellant stands upon the record admitting it was not, then surely there could have been no error in allowing the defendant to plead over and file his *second* amended answer, when the plaintiff himself had made the same necessary by inducing the Court to sustain his exceptions to the *first* amended answer. And certainly on the score of judicial favors it ill becomes the appellant to complain of an abuse of discretion; for he had been allowed *three* several amendments to his original bill, which was *one* better than defendant enjoyed even after the filing of his *second* amended answer.

But in addition to the foregoing considerations is the

fact that the record shows affirmatively that appellant actually *consented* to the filing of this *second* amended answer. We have sometimes heard of counsel being unscrupulous enough to seek to circumvent the effects of a stipulation, but this is the first time that we have ever known that reputable counsel could be found who would seriously and laboriously endeavor to avoid a solemn entry of voluntary consent specifically spread upon the records of the Court. The record recites that when defendant moved to file his second amended answer the "complainant [was] now here in open court consenting thereto." (Rec. p. 211). This was but a courteous recognition of a similar consent accorded complainant by defendant when he was moving the court *after all the issues were made up*, for the right to file a *third* amended bill. (Rec p. 12.)

The sequel shows that appellant was not prejudiced in any way by the filing of this second amended answer, for it was nearly five years thereafter, before he found it convenient to proceed with the case, and he then had the same opportunity as the defendant to submit his proofs upon the enlarged issues of the new pleadings. There was no surprise nor was anyone misled, nor were there any exceptions, objections, or complaints, and all the proofs were taken, argued, and the case finally determined.

Here for the first time in the highest court of the nation, appellant has at last found counsel, for whom we have high respect, who will trifle with its dignity by an elaborate contention that when defendant was moving for the right to plead over, and Gottlieb "consented thereto" —his consent extended not to the right asked, but only to the 20 days for its exercise!

To cite authorities upon this point now under discussion is certainly unnecessary. Counsel must be familiar with the practice so repeatedly announced by this Court, that as a general rule no judgment or decree will be re-

versed upon an objection not raised below.

2 Fosters Fed. Pr. p. 1086 § 494 and numerous cases cited.

1 Fosters' Fed. Pr. p. 271 § 157.

Reynolds vs. Crawfordsville 1st Nat. Bnk., 112 U. S., 405.

This is the familiar rule declared and enforced by all courts, and it therefore must be that the grounds of this appeal are so desperate as to excuse counsel perhaps, for flying so boldly in the face of it.

II.

Defendant's Deed to the Lands in Controversy Made to Him by His Brother, Samuel, Dated November 13, 1876, is not Fraudulent; and there is no Fraud in this Case on the Side of the Thatchers.

Appellant seems to claim (p. 10) that had Judge Hallett passed upon the case when he had the same under advisement his findings would have been in his favor on the issue of fraud. This claim has no support from the record, and if counsel would wander far enough outside of the record to test his speculation, it is our opinion that he would find the truth lies in an entirely opposite direction. He indulges in the same presumption, because His Honor Judge Brewer, found so much fraud on the part of Gottlieb and found his hands so unclean as to make it entirely unnecessary to consider any alleged fraud on the part of Lewis and Samuel Thatcher.

We are ready to admit that if all that counsel can *imagine* as happening between these brothers is to be taken as fact, that our defense of the business dealings between Lewis and Samuel Thatcher is wholly impossible and they are condemned in advance. But let us for a few moments take a calm and dispassionate view of the trans-

actions in question between these brothers. Our standpoint of judging them must be their own,—not that of Joseph Gottlieb. We will not, however, essay a defense of the business of gambling merely because Samuel Thatcher was unfortunate enough to beso constitutedas to find pleasureable enjoyment as a prince of the green cloth!

We do not need to believe half we hear, to know that if at the capital of our nation, all were hopelessly condemned who find habitual pleasure in the same kind of enjoyment, many a man of conscience, honor and integrity, would fall by the wayside. This record shows Samuel Thatcher, as we think, was a conspicuous example of what is often found in his fraternity,—a man with a frank, generous, open heart,and whose word was as good as his bond. He was undoubtedly a man of strong individuality and combative and resentful of any intrusion upon what he honestly thought were his lawful rights. His history in this case begins with a legal struggle he was having with one Samuel Koucher, the exact nature of which is not disclosed by the record. Koucher prevailed in this litigation, and secured judgment May 7, 1874, for $2,710.40 in the district court of Arapahoe county, Colorado. Samuel Thatcher, however, appealed to the Supreme Court of the territory, and later to this Honorable Court, but was unsuccessful to the end. One question to which we will refer later, that was somewhat mooted in connection with the said Koucher judgment of $2,710.40, after the case was appealed to this court, was, whether if it were affirmed here, it would be a lien on Samuel Thatcher's real estate, attaching from its original date, May 7, 1874. Some people, it seems, differed in opinion on this question and it is still undetermined in this case.As for ourselves, however, we submit that such lien would clearly attach, and that as far as the record shows Samuel Thatcher's attorney was not of different mind.

The judgment of affirmance in the Colorado Territory

Supreme Court was entered July 10, 1875. (Rec p. 199.) The citation and writ of error to this Honorable Court was served July 14, 1875. (Rec. p. 197.) But the affirmance in this Court did not occur until December 17, 1877. (Rec. p. 200.) The mandate was received and filed January 28, 1878. (Rec. p. 199.) It will thus be seen that on the thirteenth day of November, 1876, the Koucher case was pending in this Court, undetermined. Anticipating an affirmance and a lien on his real estate, although of course he could not *know*, and it was barely possible that he might be wrong as to the actual happening of either event, Samuel Thatcher opened negotiations with his brother, Lewis C., who was residing in St. Louis, Mo.

This brother, the present appellee, seemed to be in prosperous circumstances as Superintendent of the St. Louis Lead & Oil Co., with a salary of $5,000. He was willing to take a chance in Colorado real estate, upon the representations of his brother Samuel, and Samuel's attorney, H. R. Hunt. In case of an affirmance of the Koucher judgment and the probable lien that would attach he was clearly selling encumbered property. What he had to sell was in the nature of an equity of redemption. It was valuable, of course, but when sold it relieved Samuel Thatcher from the anxiety and suspense and shifted the whole hazard of the litigation upon Lewis C., the purchaser. Under such circumstances it was necessary that Lewis C. should at least be made to see a bargain in it. What the Arapahoe County lands and two Denver lots (the property now in controversy) were worth in the fall of 1876, is not apparent, but six years later, Aug. 8, 1882, Mr. E. A. Reser, a witness produced by Gottlieb, testified that *if* the acre property were *under irrigation* (and it was not and is not even now) it would be worth from $10 to $15 per acre (Rec. p. 64). It was vacant, wild, unoccupied land, in Nov. 1876, without any means of irrigation,

and must necessarily have carried a low value in the trade between the brothers. Mr. Reser at the same time in 1882, values the two Denver lots at $5,000—one $4,000 and the other $1,000 to $1,500. (Rec. p. 63.) Now to make the trade good and to have some of the advantages of a speculation in it, it was certainly necessary to add other property to the deal outside of Arapahoe county, and this was accordingly done, and lands in El Paso and Elbert counties were thrown in. It must be remembered that all this was done at a time when, besides Gray & Eicholtz, Sam Thatcher's *only* creditor was Samuel Koucher, and *he* was to be *expressly* cared for in the trade that was being made. The amount of his judgment, as we have seen, was $2,710.40; but February 20, 1878, when it was finally paid off by Lewis C. Thatcher, it amounted, with interest and costs, to $3,736.52. (Rec. pp. 158, 159, 161.) In November, 1876, however, it could not then have been exactly known what this judgment would eventually amount to, which was another element of uncertainty entering into the trade between the brothers, and which naturally injected into the negotiations between them terms that under other circumstances, would not have been made. This explains why Samuel Thatcher was willing to take his brother's two notes of $2,000 each for the Arapahoe county property, and as far as the record shows the Elbert and El Paso county lands were paid for in cash. He had confidence in the ability of his brother and was willing to wait for the balance of the cash. He was getting by the trade out of his real estate $8,000, and relieving himself from all anxiety as to raising the Koucher judgment in case of affirmance. His brother was getting land in which he was willing to invest ~~$11,000 or $12,000~~ $8,000 and take the chances of a rise. Lewis C. Thatcher was amply able to make this speculation (Rec. p 34, 40). What, we ask, was there in the situation of these parties Nov 13, 1876, to prevent the consummation of such a trade

if both Samuel and Lewis were satisfied? Gray & Eicholtz found no fault with it, and certainly Samuel Koucher could have found no fault with it, for he himself stood in the deal, providing only he succeeded in affirming his judgment, and if it was reversed he lost his interest as a creditor. No one has appeared who swears, or even intimates in his testimony, that this trade was driven to hinder, delay or defraud Samuel Koucher, nor was he himself produced to say so, although there can be no question but he would have been so produced had he not probably declared to Mr. Gottlieb that he had no such thought.

Samuel Thatcher was dead before this suit was begun, but the defendant, Lewis, was examined as a witness by and on behalf of the *complainant*, and was thus held out to the court as worthy of full credit,—but he utterly repudiated any such thought or intent (Rec. p. 42–3).

Sam Thatcher was certainly solvent at the date now in question (Nov. 13, 1876) for it was only two days later that he paid a thousand dollars to Gray & Eicholtz (Rec. p. 123), and Mr. Eicholtz swears that at the time of this payment Sam Thatcher was both *solvent* and *reputed* to be solvent (Rec. p. 123). Thus we see the transaction was fair and straight as to Kaucher, and Gray & Eicholtz, and it is not at all likely that if fraud was in the mind of these brothers in the matter of the foregoing conveyances, that Samuel would only two days later be found paying Gray & Eicholtz a thousand dollars. His thought must have been that he had fully provided for Samuel Kaucher and he would now get even with the world by paying off Gray & Eicholtz. And this he does. As to *existing* creditors there can be no doubt that these conveyances were good and valid. If this be so, under the authorities *subsequent* creditors, are in no position to complain.

A subsequent creditor can only avail himself of the fraud which is practised against him.

Harlan vs. Maglaughlin, 90 Pa. St. 293.

A *voluntary* conveyance of real estate to defraud *existing* creditors, is void as to such creditors; but it cannot be attacked by a *subsequent* creditor when the conveyance was not made in contemplation of future indebtedness and the claim of the *subsequent* creditor was not incurred on the faith or credit that the property in contest belonged to the debtor.

Shephard vs. Thomas, 24 Kan. 780.

One who in good faith and for a valuable and sufficient consideration, purchases a tract of land will be protected in such purchase, although the grantor was in debt and intended by such sale and conveyance to hinder, delay and defraud creditors.

Forlin vs. Sook, 30 Kan. 401; s. c. 46 Am. Rep. 100.

"In case of an attack by *existing* creditors, however, they are aided by the presumption that the conveyance *if voluntary*, was intended to defraud them, *while the burden is upon subsequent creditors to show fraud in the transaction.*"

8 Am. and Eng. Encyc. Law, p. 752, Tit. Fraudulent Conveyances.

As against *subsequent* creditors, even a conveyance by a solvent husband to his wife, when not reasonably expecting insolvency or embarrassment, is held good.

Carr vs. Breeze, 81 N. Y. 584.

Under the foregoing authorities we might stop at this point and confidently submit that the conveyances in question vested in Lewis C. Thatcher a good and valid title to all the lands described therein, including the land in controversy.

But so well convinced are we that these brothers never had a thought of hindering, delaying or defrauding a soul on earth,—we will very gladly submit a few observations upon the proposition of counsel that Gottlieb was

the person whom these conveyances were intended to defraud. The conveyances are dated Nov. 13, 1876. The Zella Glenmore note on which Samuel Thatcher was only a surety, did not mature, even nominally, until Nov. 18, 1876, and in addition there were three days of grace. This note was for $2,700, and Zella Glenmore swears the interest was all paid except for the last month when $50 instead of $135 was paid (Rec. p. 19).

Now the security of this note was furniture worth $6,000. This value was fixed by Robert S. Wilson, probably at Gottlieb's request, (Rec. pp. 124-5). At any rate there is no dispute in the record as to the fairness of this valuation, and it seems to have been made with the express view of enabling Gottlieb to know exactly what he was to get in his chattel mortgage, for it was made before the loan (Rec. p. 20), and the said Zella claims to have known the value of such property and says it was as good in November 1876, when Gottlieb took it as in the November preceeding (Rec. p. 20).

In addition to $5,000 or $6,000 worth of furniture, Gottlieb had 320 acres of land in Douglass county, as security for the $2,700 note. Samuel Thatcher owned this land and at the time the note was made, conveyed it by a trust deed as security for the said note. As such security it was worth at least two or three thousand dollars. Now we ask in view of the fact that Samuel Thatcher's liability on this note was only contingent, whether it is reasonable to suppose that on November 13, 1876 he had any cause for apprehending that Joseph Gottlieb would ever become his creditor on account of said note in the sum of $2,171, or any other sum?

Zella Glenmore had kept up the interest on the note and for all Samuel Thatcher knew might have raised the principle at its maturity. At any rate it is more reasonable to suppose that November 13, 1876, Sam Thatcher thought that Joseph Gottlieb in case of default,

would have been fully and amply satisfied out of securities worth from $7,000 to $9,000, than to suppose that he (Thatcher) *in advance* entertained the thought that all these securities would be utterly and shamefully trifled with, plundered, misappropriatod and lost resulting in but a gross credit on the $2,700 note of about $2,000, and that Gottlieb would still get a deficiency judgment against him for $2,171! He had a right to suppose and *did* suppose that Gottlieb was well and amply provided for, with the securities at his command, and any reasonable person must certainly reach the same conclusion. Men are not supposed to be plunderers and ghouls in advance of actually making such despicable objects of themselves.

Certainly no Court in the absence of the most satisfactory and convincing proof will conclude that Joseph Gottlieb stuffed full as it were, with ample, valuable and specific securities, was such a source of anxiety to Samuel H. Thatcher on November 13, 1876, as to inspire in him the wicked thought to hinder or defraud Gottlieb by conveying away his property.

But even if this bridge could be passed there is still another in the way. To invalidate the said deeds it must appear that Lewis C. Thatcher, the grantee participated in the fraudulent intent imputed to Samuel. Upon this point and some others pertinent to it we here submit the following authorities.

Generally, to render a sale or conveyance void as to vendor's creditors, there must be mutuality or participation in the fraudulent intent of both vendor and vendee.

Schroeder vs. Walsh, 120 Ill., 407.

Both parties to a sale must know of or participate in the intent to defraud creditors to render the sale void.

Hanchett vs. Kainbark, 118 Ill., 126.

Fraud is not presumed; it must be proved.

McCarthy vs. White, 81 Am. Dec. 754, and note.

Chic. S. Co., vs. Hanchett, 25 Ill. App., 198.
Hempstead vs. Johnston, 65 Am. Dec. 458, and note, 474.

Burch vs. Smith, *Id.*, 157 and note.

Fraud is not to be presumed when the transaction can be fairly reconciled with honesty.

Dempsey vs. Bowen, 25 Ill. App. 192.
Harding vs. Crate, 60 Ill., 221.
Lake Shore Ry. Co. vs. Pittsburg Co., 71 Ill., 40.

Nor because creditors have been delayed and hindered in collecting.—*Id.*

Notwithstanding the section of our statute of frauds quoted by counsel, an assignment is good as between the parties to it in Colorado.

Coon vs. Rigden, 4 Colo., 28 (1878).

A mortagee (supposing Gottlieb to occupy that relation) cannot object to an assignment of the equity of redemption as fraudulent.

Bradley vs. Snyder, 14 Ill., 263.

It is not a fraud on creditors for an insolvent to buy a homestead which will be beyond their reach.

Cipperley vs. Rhodes, 53 Ill., 346.

In such case a purchaser may take deed to his wife, if he does so in good faith.—*Id.*

As between the parties thereto, a fraudulent conveyance passes title.

Hallorn vs. Trum, 125 Ill., 250.

A fraudulent conveyance as to a creditor, is not void, but voidable.

Rappley vs. International Bank, 93 Ill,, 396, *interpreting* Gauer vs. Steinberg, 84 Ill., 170.

We submit a few cases to show how far the doctrine is carried that a *bona fide* purchaser without notice of the fraudulent intent of the vendor, and for a valuable and and good consideration, no matter what relationship ex-

isted between them, is entitled to hold as against all creditors and other persons.

In *Thorpe vs. Thorpe*, 12 S. C. 154, decided in 1879, the precise point at bar arises, with the advantage of the case at bar that the conveyance was prior to the action at law by the creditor and not subsequent, as in the Carolina case.

James G. Thorpe borrowed money from his brother in Pennsylvania while he was surety on a bond, and after the suit to recover had advanced to within a month of judgment he executed a mortgage upon certain real property to secure his brother.

The special master reported against the integrity of the mortgage, upon the ground that it was executed with the intent to hinder, delay and defraud his creditors, citing Bump on Fraudulent Conveyances, 54, 55 and 200 and raising the identical badges of fraud insisted upon by complainant's counsel.

The Supreme Court say, in words that might apply precisely to our case.

"Nor is there any evidence of any fraud in this transaction by which other creditors have been injured. But even if there had been fraud as to the other creditors on the part of the mortgagor, there is no evidence of any knowledge of the same, or collusion therewith, on the part of the mortgagee."

In *Schwabacker vs. Rush*, 81 Ill., 311, property, real and personal, was sold so as to defeat an attachment, and the possession left in the vendor, and yet the Court say, that it was in good faith, the property sold for its value, and it was good against the writ.

Another point is decided that in the attachment suit to which the vendee, as in this case, was neither party nor privy, the vendee could not be barred. Before his rights could be cut off, he ought to have his day in court.

In Erb vs. Cooley, *et al.*, 31 Ark., 554, the Court says: The fact that a person selling his goods is, at the time, indebted, and does not intend to pay the money he received for them to his creditors, is not a circumstance sufficient of itself from which fraud or a dishonest purpose may be inferred. A sale, to be fraudulent as to creditors, must be made with the intent to hinder, delay or defraud them, in which purpose the purchaser must participate, with the view and aim to aid and forward it, Citing 9 Ark., 482; 23 Ark., 258; 30 Ark., 417.

1 Story's Eq. Jur., Sec. 190.

In Sharp vs. Wilson, 76 N. C., 94, the Court asked the decisive question: "Did the purchaser purchase for value and without notice of the fraudulent intent?" And then says that mere notice, even if he did know of the fraudulent intent, and yet did nothing to further the same, would not affect him.

In Grant vs. Ward, 64 Me., 240, where the defendant sold to his wife, and was put on the stand to testify in his own behalf, and not, as in this case, by the complainant, the Court say of the deed:

"It may have been made to defraud creditors, but there is no evidence of any such fraudulent purpose. On the contrary, the defendant swears, it was made in good faith, and for a full and valuable consideration. Fraud cannot be presumed. Giving effect to it (the defendant's deed), entirely defeats the plaintiff's title, and judgment must go against him."

How much stronger are the facts of the case at bar? The fraud is entirely in the imagination of the complainant's counsel, and in the complainant himself.

In Thornton vs. Tandy, 39 Tex. 447, the Court goes farther and says: "That the fact that the transferee has knowledge that the debtor is insolvent, and that the assignment to him will delay, and even defeat, the claims of other creditors, will not effect the legality of the transac-

tion, and a person in failing circumstances may also sell, * * so as to defeat or delay his creditors, provided the vendee purchase in good faith, wilhout the knowledge * * of the intent of the vendor."

In that case a much stronger showing was made against the defendant than in the case at bar.

In Doe vs. Davis, 64, N. C. 500, the Court says: "To render a contract void for fraud, the fraud must affect the contract. A contract is not the purpose of one, but the agreement of two minds; and, of course, both parties must intend the fraud." Citing—

I Iredell 490; 7 Jones 300,and other cases.

To the same effect are—

Knight vs. Forward, 63 Barb., 311, and Foley vs Bitter, 34 Md., 646.

Lewis C. Thatcher, who is unimpeached and given full credit as a witness called by the complainant, himself says when subsequently on the witness stand in his own behalf that he never heard of Gottlieb's claim until "several months after the purchase" by him of the lands in suit. (Rec. p. 80).

This certainly ought to be enough upon this question to readily resolve this issue of fraud in favor of defendant.

But there are many other things in the record in matters of detail that appellant will undoubtedly count on in rounding out his imputation of fraud. We will now give to such matters more attention than they deserve only because in the hands of counsel for appellant, by innuendo and suspicion and unfounded inference they are improperly made to signify altogether too much.

It will not be overlooked that the complainant's charges in this regard hang largely, if not wholly, upon the defendant's testimony.

He is a credible witness, and his integrity and truthfulness as we have seen is vouched for by the complainant

himself. Not that the complainant is a good judge of integrity and veracity, but because he is forever estopped to say that his own witness is unworthy of belief.

Yet this is the burden of his counsel's argument. To break down his own witness, to throw mud at him, to insist that he is a liar, and, to finally declare that his testimony is unworthy of belief, he makes a printed argument of many pages.

The necessity is apparent; the subtlety and ingenuity of the argument is also apparent. It won't deceive any body, and must fall powerless before the law and the facts.

"When a party offers a witness in proof of his cause, he thereby represents him as worthy of belief. He cannot thereafter impeach him nor impugn his credibility."

1 Greenleaf's Ev., sec 442.
Jones vs. People, 2 Colo., 356, &c.
Holbrook vs. Mix, 1 E. D. Smith.
Hunt vs. Hoover, 34 Ia., 79 (1871).

It is idle to say that they were compelled to make him their own witness. If they got short of evidence they could always call Gottlieb. They had other witnesses as to Samuel Thatcher's intent,and they could have shown by A. Jacobs and Co., whether the notes were actually paid or not, and whose money paid them.

The fact is they were satisfied of the *bona fides* of this transaction when Lewis Thatcher left the stand, and did not want to make his case any stronger. Now, that Samuel Thatcher is dead they may call him a gambler,and paint him as they like. His case is with his God, and the remembrance of his good deeds is with his friends, and when the last day shall come, and the gambler and the pawnbroker shall stand before that awful throne to be judged, I would rather plead the case of the gambler who "bucks the tiger" with moneyed men, than the pawnbroker who fattens upon the necessities of the poor and unfortunate.

But let them say what they please of Samuel they knew his brother Lewis is a man who makes his bread by the sweat of his brow, that he belongs to the "hewers of wood, and drawers of water;" can run an oil mill and speak the truth. If there was any fraud in this purchase they believed he would tell it.

Had he been an unprincipled man, one whose reputation for truth and veracity was bad, they would not have called him. They would have introduced Gottlieb as an exhibit to show fraud, and rested their case.

Mr. Thatcher's testimony was candid and never evasive. Whenever he don't remember, it is about the several dates and amounts of his remittances. Six years had intervened, he was not in the habit of keeping copies of his own letters, nor the originals received from other people. When they accumulated they were destroyed, as many other people are accustomed to do and they were destroyed before this suit was begun. (Rec. p. 39). Had they been destroyed afterwards there might be something suspicious about it.

We submit that there is nothing unusual about this. It is our common experience that men cannot remember dates and figures, and it is the universal habit of men to destroy letters after they are a year old, especially letters from relatives. The letters inquired about here would have been three years old when this suit was begun. The possession of the notes and the deeds themselves, were sufficient evidence of the payment of the money.

There was no prevarication about the power of attorney as evidence.

He remembered having made one, remembered the reason why it was given, and looked for the record of it in this county.

The lawyer who prepared it undoubtedly followed a form which contained an *omnium gatherum* clause, but the brother never used it except to do the very business

testified about. (Rec. p. 39.)

If he had bartered and sold and exchanged the lands, if he had continued to hold possession, and to collect and use the rents, there might be some force to this power of attorney as evidence of fraud. But the evidence shows the contrary to be true.

It will be noted, too, that the power was not given until nearly two years after the deed in question. It is dated January 11, 1878. (Rec. p. 153.) Had it been given in close connection with the deeds it would undoubtedly have been a badge of fraud, but now the great time intervening shows affirmatively that Lewis was right in saying it was only given to sell some timber land. (Rec. p. 39.)

But even if he had left the property in his brother's hands, and the latter had exercised all the powers of that letter of attorney, there would still be no fraud in the face of the actual payment of the purchase money.

Retention of property by a former owner is not an index of fraud, nor does leaving property in the possession of the former owner warrant any inference of fraud.

Maynes vs. Atwater, 88 Pa. St., 496.
Town vs. Fisk, 127 Mass., 125, 127.
Palmer vs. Manghan, 31 La. Ann., 348.

The method adopted by counsel in examining this witness on the subject, of this power of attorney was the only fraudulent thing about it. The paper was not shown him, no opportunity was given him to inspect it. In order to impeach a witness by a paper written by him, the paper must be shown to him, and he must be asked if he made that power of attorney.

2 Green. Ev., Sec. 463 Red. Ed.

Peck vs. Parchen, 52 Iowa, 46.

There was nothing secret nor peculiar about the defendant's transmittal of the money. He is not the only

man who is afraid to send money by registered letters. Had he employed that method and thus notified everybody that there was money in the letter, it might have shared the fate of many a similar letter, and become a total loss. Uncle Sam does not guarantee the return of lost monies. The defendant's method had been proved good by years of experience and the money got through all safe. (Rec. pp. 33, 38.)

His testimony about the El Paso and Elbert county timber lands will not bear the construction counsel put upon it. He was never asked about the consideraiion of those deeds. They are under seal and import a consideration of $2,000 each.

It was for them to show that the consideration was different than that expressed in the deeds, or that no consideration was paid. In this they wholly failed. Nevertheless, the complainant has the effrontery to say that "no consideration was paid." None of the evidence of Lewis C. Thatcher as to the giving of notes, has any reference whatever to the timber lands,—that is the Elbert and El Paso county lands. The only notes given, as far as the record shows, were in payment of the Arapahoe county property. The timber lands were paid for in cash, as far as the record shows. The Court cannot hold otherwise, in the absence of testimony to the contrary.

I Green. Ev., Sec. 19 (Redfield's Ed.)

Counsel's efforts to hold up and comment upon *four* notes, instead of *two*, of $2,000 each, is nots upported by the record.

It is clear that counsel were so overwhelmed by their own witness, that they are now driven to make their case out of what he did not say and was not inquired about.

A great deal has been said about "badges of fraud." What is a "badge of fraud" and in what do these badges consist?

"A badge of fraud may be defined as a fact calcu-

lated to throw suspicion upon a transaction, and calling for an explanation. Its only effect in general is to require a more stringent proof of the consideration for the transfer and the good faith of the parties than would be demanded where no suspicion or unfairness exists."

Bump on Fraudulent Conveyances, 31.

We submit to the Court that everything which might be considered a badge of fraud in this case has been satisfactorily explained.

The proof does not show that the debtor conveyed all of his property to his brother. The Zella Glenmore note was not due. He was only a surety upon it, and it was amply secured. No suit was pending, none threatened. There was no intent to defraud Kaucher, for he was well secured, and was afterwards paid in full. There was no secret trust, no inadequacy of price, nor unusual credit. Samuel Thatcher's estate was not diminished a cent by the transaction. Lewis took possession of the property and has paid all the taxes on it to this day. John Cook, Jr., was his agent for collecting the rents, and Sam'l Thatcher always disclaimed any interest in it, and told the sheriff he wanted Gottlieb to bid his judgment on the land, because he didn't own it any way (Rec. p. 58).

It seems to us that the case at bar comes clearly within the principles of the case of Lloyd vs. Fulton, 91 U. S. 479, 487 (1875). There the debtor "received property worth more than twice and a half the amount of his debts." Here he did the same, and Gottlieb's securities were about three times the sum of $2,700 owing him.

In the case just referred to, the Court say: "The non-payment and the inability to pay are the results, not of fraud, but of accident and misfortune. When Fulton executed the deed, he did what he then had the right to do."

So, we say, Samuel Thatcher, when he executed the deeds of Nov. 13, 1876, did what he *then* had the right to do. And it is clear, too, that the subsequent non-payment

of the Gottlieb note, was because through the reckless fraud and oppression of the complainant himself in slaughtering the securities—he made it impossible for either Zella Glenmore or Samuel Thatcher to keep pace with the rapacious growth of his claim.

See also the case of Smith vs. Vodges, 92 U. S., 183, where a conveyance by husband to wife was sustained by this Court.

In the case of Prewit vs. Wilson, 103 U. S., 22, 23, the knowledge by the betrothed of the financial embarrassment of her prospective husband, which caused her to insist upon the execution to her of the conveyance afterwards attacked by creditors, was held insufficient to impeach the instrument.

In this connection, too, we wish briefly to refer to two cases that will undoubtedly be found in the brief of counsel for defendant. They are Burt vs. Timmons, 29 W. Va. 441, 452; Hickman's Exr. v. Trout, 83 Va., 478, 490-92. The first of these cases holds that "transactions between father and child, brother and sister, husband and wife, or between others between whom there exists a natural and strong motive to provide for a *defendant* at the expense of honest creditors, if such transaction is impeached as fraudulent, it may be shown to be fraudulent by less proof and the party claiming the benefit of such transaction is held to a fuller and stricter proof of its justice and fairness *after it has been shown to be be prima facie fraudulent*, than would be required if the transaction was between strangers."

Citing Bump Fraud. Con. 3d. Ed. 57-9.

In the second case last above referred to the conveyance was between father and son, and it was held that proof of fraud rests on the party alleging it, but the burden shifts, *after a prima facie case is made*, and that to vitiate a conveyance on the ground that it was made to

defraud the grantor's creditors, the grantee must have had notice of the grantor's intent."

It will be noticed that despite any claim to the contrary made by apdellant's counsel neither of these cases relieve Mr. Gottlieb from the burden of proof upon the issue of fraud, and neither refers to any transaction between brothers, except inferencially in the first case, where a "defendant" is being provided for by those having a nstural and strong motive to make such provision. That, we submit is far from being the case at bar.

We have already seen that fraud is never presumed. It must be distinctly proved, with all the presumptions against it. The fraudulent intent must be shown in the grantee as well as in the grantor.

Kerr on Fraud, 382 *et seq.*
1 Best's Ev., 426, 590.
1 Story's Eq. Jur. Sec. 694.
Jewett vs. Cook, 81 Ill., 260, 463.
Powers vs. Geeen 14 Ill., 388.

Fraud in a conveyance is not presumed because of a fraudulent conveyance made soon afterwards between the same parties.

Bumpas vs. Dolson (1846) 7 Humph. 310; 46 Am. Dec. 84.

This is admitted by counsel in their argument, while relying upon an *ad captandum* plea that he ought to have known and probably did know.

Even granting, however, as we have before said for the sake of argument, that Samuel Thatcher did intend to prevent Gottlieb from jumping on to this property, and that Lewis knew it, still the conveyance would not be fraudulent unless they further show an intent to defraud ALL of the creditors of the vendor. He had a perfect right to sell this property and use the money to pay Kaucher, his only other creditor and leave Gottlieb to his securities, which, Conscience knows, ought to have satisfied him.

In the case of Clement vs. Moore, 6 Wallace 299, 310, this very thing was done, and the Supreme Court of the United States upheld the conveyance as good, allowing to the unpreferred creditors the right only to follow a portion of the purchase money represented by notes still unpaid.

See also Story's Eq. Jur. sec., 370, 12th Ed., where the author says: "A conveyance is not necessarily frudulent because it may operate to the prejudice of a particular creditor."

Mr. Gottlieb's claim that he had an equity in this land, was looking to it for the satisfaction of his sixty per cent note, is the veriest sham. There was nothing in the property for him. Its full value was $4,000, and the Kaucher judgment was a first lien for it all. He did not want the land. He had an opportunity to pay off the Kaucher judgment and take it at the execution sale to the defendant. He was present and declined to bid. (Rec. p. 61.) And he could have redeemed as a judgment creditor. (Gen. Laws, 1877, p. 527, Sec. 1420; Mills' Ann. Stat., p 1477, § 2548.)

Up to the time of Denver's boom in real estate, Gottlieb wanted money, and stood upon a creditor's bill. After real estate became more valuable than his ill-gotten judgment, he changed his pleading, set himself up as a landowner, and cuts a ridiculous figure, as it seems to us, with his so-called title.

We submit to your Honors that no fraud has been shown in this case, and that none can be presumed.

The only other evidence than that already considered tending to sustain the charge of fraud, is the testimony of Joseph Gottlieb himself, the complainant in the case. But as we submit he was thoroughly and successfully impeached on the hearing, we will now set out separately his testimony in this regard, in connection with the impeachment.

III.

The Impeachment.

Mr. Gottlieb testified (Rec. pp. 46-7) that defendant told him "that he didn't come to Denver to get any property or to gobble any money; that he don't know nothing about the property; that his brother and Hunt wrote him

letters, and advised him to buy such property as they described to him, and forward notes for the same; and he simply done as they advised him; that he didn't care anything for property, nor money nor valuables; that he simply came as a brother to bury his brother."

This was an all important point in Gottlieb's case, as his lawyers must have told him. He must bring notice home to the defendant and connect him with the fraud, or his case must fall to the ground, no matter what Samuel Thatcher's interest might have been. He seems never to hesitate at anything, and he swore to it like a little man. But Lewis Thatcher contradicted him flatly.

We quote from the record (pp. 51-2) as follows:—

"Q. 8. When and where did you first meet Joseph Gottlieb and under what circumstances?

Ans. I first met Mr. Gottlieb to know him at the American House in Denver on the evening of the 13th of February, 1879. The circumstances connected with that meeting—I was brought, or rather came here to Denver to bury my brother, who died, I believe, on the 9th of the same month. After having seen my brother at the undertakers, and on my return to the hotel I asked the clerk of the hotel to please give me the key to my room. He did so and at the same time handed me a piece of paper that had been filed away in the same pigeon hole with the key, and while reading this paper at the counter a gentleman came to me and asked me if my name was Thatcher. I answered that it was. He then told me that he was Mr. Gottlieb.

Q. 9. State the conversation, if any, which took place then and there between you.

Ans. Mr. Gottlieb then said to me that he would like to have a little confidential talk. I said yes, but on looking around where I was standing I saw a number of gentlemen in the office. I failed to recognize anyone then that I knew, and I said to him that if the conversation was to be confidential that he had better go up into my room with me and have this talk. He did so. We took seats at the table. I then asked him what he wanted to talk about. He said that it was in relation to the property that I had purchased from my brother. I told Mr. Gottlieb that I was in no frame of mind or condition to talk about these

things, that I had come to Denver to bury my brother and not for his blood, and I hoped that he would spare my feelings and please allow me to bury him undisturbed about these matters. He says, well, I just come to tell you about it; and I declined to talk about it any further, but told him that I would be in Denver a couple of weeks and during that time we might meet. It appeared satisfactory to him then and he allowed me to bury my brother in peace.

Q. 10. Did you tell him in that or any other conversation that you didn't come to Denver to get any property or to gobble any money, or words to that effect, or did you make to him any statement to that effect?

Complainant's counsel objects that the question calls for a contradiction of testimony called out upon the cross-examination which was new matter, and that it is immaterial and incompetent.

Ans. To the best of my recollection I never did.

Q. 11. Did you say to him in that or in any other conversation, that you knew nothing about the property; that your brother and Hunt wrote you letters and advised you to buy such property as they described to you and forward notes for the same; that you simply did as they advised you to do; that you didn't care anything for property nor money nor valuables? Did you make those statements or, either of them, or any to that effect to Mr. Gottlieb?

Complainant's counsel objects for same reasons last above stated.

Ans. I made no such remarks to Mr. Gottlieb nor any other man on earth."

Comment upon such sad but pointed testimony as this is unnecessary. It is not at all strange that the man who could be guilty of the rude and heartless conduct here set forth, could also be successfully impeached by his neighbors. And such was done, by thirteen witnesses, viz: Fred Z. Salamon, Philip Trounstine, William Trounstine, Joseph Salamon, Moses Amter, R. S. Wilson, F. F. Hill, J. S. Foster, J. P. Lower, A. C. Potter, J. J. Maxey, J. U. Marlow and E. G. Owens.

In their evidence they fulfilled the requirements of the law.

They were all citizens of Denver; had known Gottlieb since 1868 or 1869; knew what his general reputation was for truth and veracity in this city. They all said it was bad, and that they would not believe him under oath in any case where he had a pecuniary interest.

They were cross-examined as to their means of knowledge, and this only served to swell the number of names who considered his reputation bad.

They were cross-examined as to malace, and this only served to bring out more clearly Gottlieb's rascality in business, and the ins and outs of his life as a pawnbroker.

They were cross-examined to show that his reputation was just as bad before these personal difficulties as afterwards.

A man's reputation must pass into a state of absolute rottenness, before his neighbors will show it up in Court. His general and particular rascality must make him many enemies before witnesses can be found. No man can testify to such a reputation, and say that he is friendly to the possessor of it.

The rebuttal of this impeachment was very cunningly arranged. They knew very well that if they sought out men who knew Gottlieb's general reputation, they would find no witnesses. Therefore they steered clear of all such men, and brought in some chaff and some good citizens, respectable gentlemen and men of standing, who didn't know his general reputation.

In this way they hoped that, inasmuch as his bad reputation had escaped the knowlege of these reputable gentlemen, it might also be smuggled through and escape the attention of the Court.

They all frankly say that they do not know his general reputation. So far as they know, it is good. They do not know, therefore it may be bad or good. To find out, we must go to those who do know.

Negative testimony is no testimony. This is reason and common sense. It is also law.

The examination must be confined to general reputation.

1 Green, Ev., pp. 508-9. Sec., 461 (Redfield's Ed.)

"Before a witness is qualified to speak, he must know the person's general reputation."

Id., and p. 510, note 2.

1 Whart. Ev., Secs. 563, 564, 565.
Teese vs. Huntington, 23 How. (U.S.,) 2, 13.
United States vs. Vansickle, 2 McLean, 219.
Knode vs. Williamson, 16 Wall., 586,588.

It was proper to ask the question whether the witness would believe the party under oath, etc.

1 Whart. Ev., 565, note 1, p. 540.

Were the law otherwise, a witness who knew nothing about the case would be of more consequence than those who know all about it.

The only witness presented by them who was at all likely to know Gottlieb's general reputation was Hon. Frank Church; but he frankly admits (Rec., p. 138) that he has heard that reputation more often spoken against than for in this community.

The Court will observe, however, that the witnesses, Wright, Leach and Smith are the only ones who say they never heard Mr. Gottlieb's reputation questioned. Mr. Cornforth says he only knows it from individual transactions. Mr. Gove says he knows nothing about Gottlieb's neighbors; only knows him through small business transactions. Mr. A. C. Haynes says he does not know him intimately.

The witnesses, Scott, Dailey and Hanna, showed no intimate acquaintance with Gottlieb. They merely know there is such a man, and that he has lived in Denver since 1869. As to his reputation, they say it is good as far as they know. To make such evidence of any importance, they must have shown how much they did know. In other words, the witnesses should have qualified themselves under the rule before being permitted to testify. Therefore we insist upon all our objections, as filed, to this rebuttal evidence.

The rule is well and abundantly settled by the authorities above cited.

We call the Court's attention particularly, however, to Teece vs. Huntington, 23 How. (U. S.), p. 13.

"Whenever a witness is called to impeach the credit of another, he must know what is generally said of the witness whose credit is impeached, by those among whom the last-named witness resides in order that he may be able to answer the inquiry either as to his general character in

the broader sense, or as to his general reputation for truth and veracity. He is not required to speak from his own knowledge of acts and transactions from which the character or reputation of the witness has been derived, nor indeed is he allowed to do so, but he must speak from his own knowledge of what is generally said of him by those among whom he resides, and with whom he is chiefly conversant, and any question which does not call for such knowledge is an improper one and ought to be rejected."

We think Mr. Gottlieb has been successfully impeached.

IV.

The Defendant's Title Through the Kaucher Execution Sale.

In the first place, as we have seen, defendant has the valid *bona fide* fee simple title to the property in dispute, by a warranty deed dated November 13, 1876, and antedating the sheriff's deed to Gottlieb by nearly two years. As to this title we have already said enough.

In the second place, defendant holds under a sheriff's deed, founded on the Kaucher judgment, regular in all particulars, and relating back to the seventh day of May, 1874 (Rec. p. 162), when the said judgment became a lien.

It is alleged in the bill that the money paid for this sheriff's deed was really Samuel Thatcher's money, but this is contrary to ever word of the testimony. It is said however, that Samuel Thatcher cancelled the notes held by him from his brother. Well, the fact is, that one of these notes had been negotiated with A. Jacobs & Co., and was actually taken up and paid by Lewis after Samuel's death. But for argument's sake let it be granted. What, then? It does not prove that it was Samuel Thatcher's, money; it only proves that Lewis, finding that S. H. Thatcher could not protect his warranty deed, had to protect himself with his own money, and then Samuel, as an honest man, was bound to hold his warrantee harmless. This purchase of the Kaucher judgment vested in the de-

fendant all the title that could pass under such a sale, and if the deed from Samuel to Lewis was honey-combed with fraud, it is entirely independent of the Kaucher sale, nor could it affect it.

We propose to consider now the matter of the Kaucher judgment.

In respect to this judgment there is not even a pretense of fraud, and the testimony does not even allude to such a possibility in this judgment. The question, then is simply, what title passes under this judgment sale.

The objection is advanced against the integrity of the lien under the Kaucher judgment, that the execution was not issued under it within the year, as prescribed by the statute. (R. S. 1868, p. 370, § 1; Gen. Laws, 1877, p. 524; Mills. Ann. Stat., pp. 1452-3, § 2529.)

The act of 1874 (Laws 1874, p. 169) provides that the judgment shall be a lien upon the filing of the abstract in the recorder's office, which the records and the bill show was done, and in the act first above cited under which the objection is raised, there is a *proviso* intended to meet just such a case as occurred in the Kaucher judgment, where the issuing of the execution upon the rendition of the judgment in the lower Court was stayed by the bond and other proceedings in appeal. It is too plain for argument that the order granting an appeal upon the usual bond is such an order staying proceedings in execution, as is within the purview of the statute.

Under the first act above the judgment creditor has six years in which to enforce his lien, provided his execution issues within a year, unless it be stayed or prevented by some judicial order or action, as in this case. It is clear, therefore, that the lien was undisturbed, and ran with its priority from the remittitur and the entry under it of final judgment.

But further: our statute was translated bodily, *in totidem verbis*, from the Illinois law (1 Rev. Stat. Ill., 861), and the Supreme Court of Colorado say, with direct reference to the liberal draft upon the body of the Illinois statutes: "In adopting the laws of a sister state, the general rule is, that the legislature adopts also the settled construction given those laws by the courts of such state, and

our legislature is presumed to have done so in these instances."

Stebbins vs. Anthony, 5 Colo., 356.

Now if the statute had not this saving clause as to the stay, by order or appeal, still the lien would be only voidable and not void, and the sale in this case would be good.

Morgan, et al., vs. Evans, et al., 72 Ill., 587.

In the case last cited, the Court say:

"This statute contains a plain recognition of the common law rule, requiring an execution to be issued within a year from the judgment, and if it had been intended that the consequences of non-compliance with that rule should be different from those which had been declared by the courts to follow such non-compliance at common law, such intention, it seems to us, would have been expressed in other language than that employed."

At the common law the judgment lien was not lost by failing to take out execution in a year and a day. It was but a slip and the judgment could be revived as of its original date. 3 Bac. Abridg. pp. 665-6, 723. Mills' Ann. Stat., §2529 notes 76, 77 78.

And in this case, too, numerous authorities are cited and the doctrine fully illustrated.

The lien of a judgment is not vacated by appeal but execution only is suspended. Curtis vs. Root, 27 Ill. 367.

In Dewey vs. Latson, 6 Cal. 133, the Court declares the absurdity of such a strict construction of the statute as is contended for by the complainant. It would enable the judgement debtor to "defeat the remedy which the law has given the creditor, and to destroy the security furnished, which must inevitably result if the construction contended for be sustained."

In other words, the judgement debtor can, by an appeal or the *supersedeas* under a writ of error, as provided for under the old Practice Act (R. S. 1868, Sec. 48, p. 515) render it impossible for the creditor to reach his *fi. fa.* within the limitation. To the same effect is

England vs. Lewis, 25 Cal., 337.
Pennock et al. vs. Hart et al. 8 S. & R., 369.
Woodcock vs. Bennett, 1 Cowan, 711.
Pennock vs. Hart, 8 S. & R. 369.

Com. vs. McKisson, 13 Id. 144.
Bell vs. Ingram, 2 Barr 490.
Bank of Mo. vs. Wells 12 Mo., 251.

It would seem, therefore, that, in view of the *proviso* in the statute first above cited, and of the authorities even where it does not exist, the objection that the execution was not issued within the year under the Kaucher judgment cannot prevail.

The course of the common law is plain, that a writ of error operated as a *supersedeas*, and the year for the execution ought to be counted from the final judgment given.

Bacon's Abrdgt., Vol. III, p. 724, and the authorities there cited.

The writ of error and citation appear among the exhibits. (See Rec. pp. 196-200, exhibits 28, 29, 30 and 31.)

When the case was appealed to this Honorable Court the citation could not have been signed and issued without previously taking good and sufficient security so as to make the writ a supersedeas.

R. S., U. S. Sec. 1000.

Mr. Bela M. Hughes, one of the most honored and venerable members of the bar in Colorado, swears that he is *absolutely satisfied* that the bond was given and that the same was made a supersedeas. (Rec. pp. 265-6).

This Court will presume, in the absence of evidence on the question, that this law was complied with, and that the writ of error operated as a *supersedeas*.

2 Whar. Ev., Sec. 1302.

If there were such an imperfection in the proceedings, it was for complainant to show it.

But we submit that it also clearly appears from the evidence of R. R. McCormack that such security was given (Rec. p. 55), for he says positively that he was on the bond. This, with the testimony of Mr. Hughes, absolutely concludes the matter.

But this is not all. The act of Feb. 13, 1874, (Laws 1874, p. 169), is as follows:

"An Act to amend an act entitled, 'An Act Concerning Judgments and Liens.' Approved Feb. 8, 1872."

Be it enacted by the Council and House of Representatives of Colorado Territory, That sections 1 and 2 of said Act be, and they are hereby sticken out, and the following inserted in lieu thereof:

Section 1. When a judgment shall be rendered in any District or Probate Court of this Territory, the Clerk of such District Court, or the Probate Judge, shall, upon demand, give to the plaintiff, his agent, or attorney, an abstract thereof, setting forth the name or names, of plaintiff or plaintiffs, and defendant or defendants, in full, the title of the Court, the date when the judgment was rendered, and the amount of the same, with damages and costs, which shall be signed by such Clerk or Probate Judge, and attested by the seal of the court, and when so executed, such abstract may be filed for record in the office of the clerk and recorder of the county where such judgment is rendered, or in any county in the Territory, and from the date of such filing, and not before *such judgment shall become a lien, upon all the real estate of defendant in the county where such abstract may be recorded, and not until such abstract shall be so filed, nor in any county other than the one in which so filed.*"

In the case of McFerran vs. Knox, 5 Colo., 220 (1880) the Supreme Court of Colorado have occasion to construe the above act, and they hold that the lien attaches *at once* upon the filing of the said abstract of judgment, and they make no mention of the necessity of taking out execution within the year. Indeed, they treat this act as virtually superseding and repealing the first act above mentioned (R. S. 1868, p. 370, § 1), at least, as far as the clause is concerned requiring execution to issue within one year. We quote from the opinion of the Court as follows:

"Elbert, C. J. Under the provisions of the statutes (Session Laws, 1874, Section 1, page 169), upon the filing of the abstract of judgment in the office of the recorder, the judgment of McFarran became a lien upon all the real estate of McGovney, the judgment debtor. Although repealed, accrued rights under this act were saved by the act repealing it. Code, 1877, pp. 162-3.

"Real estate subject to execution under the provisions of the Revised Statutes, section 1, page 370, included all interest 'of the defendant or any person to his use held or claimed by virtue of any deed, bond, covenant, or otherwise, for a conveyance, or as mortgagor of lands in fee, for life or for years.'

"It is to be presumed that the legislature used the term real estate in the act 1874, with reference to this pro-

vision, and intended a lien upon whatever real estate there might be a levy.

"In this view the judgment of McFarran, upon being filed in the office of the recorder, became a lien upon McGovney's interest in the land in dispute as assignee of the bond from Rose, unless such interest passed by virtue of the prior assignment by McGovney to Knox. Nor was this lien affected as between the parties to this suit by the fact that the bond of Rose was unrecorded. Niantic Bank, et al., vs. Dennis, 37 Ill., 381."

We submit that in view of the above act of 1874 and the above construction thereof, that there is no question left as to whether the Kaucher judgment was a lien upon the real estate of Samuel Thatcher in Arapahoe county, after the abstract of said judgment was filed with the county clerk, whether execution was taken out within the year or not. We also submit that inasmuch as no abstract of Gottlieb's judgment was filed with the said county clerk as required by the code of 1877 § 214, which is of the same purport as the said act of 1874 and repealed and superseded the same,—that the lien of his judgment only attached from the time that execution thereunder was levied.

The only question, then remaining against the validity of the title of Lewis C. Thatcher under the Kaucher judgment lies in the inquiry, whether the prior sale under the Gottlieb judgment (April term 1877) did not vest the title as against the subsequent sale under the Kaucher judgment.

We make the square issue, that the undisputed priority of lien, established by the record in the Kaucher judgment, passes the title to the purchaser under it as against any purchaser under the Gottlieb judgment.

The prior sale under the *junior* judgment does not affect the priority of the lien. The following cases are directly in point, sustaining the doctrine laid down in the text books.

Freeman on Judgments, Sec. 377, pp. 375, 378.
Rorer on Judicial Sales, Sec. 812, p. 277, *et seq.*

Rankin & Schatzell vs. Scott, 12 Wheat., 179.
Kirk vs. Vonverg, 34 Ill., 446.

Rogers vs. Dickey, 1 Gilman 637.

Marshall vs. McLean, 3 G. Greene, 363.

Lathrop vs. Brown, 23 Iowa, 40.

Littlefield vs. Nicholls, 42 Cal., 372.
Showell vs. Murray 1 Johnson Ch., 512.
Bruce vs. Vogle, 38 Mo., 100.

Sharpe vs. Williams & March, 76 N. Car., 87.

With no suggestion of fraud, either in allegation or proof, with no defect in execution or other statutory requirement, and with a perfect priority of lien, it seems that the title to the property in question under the sheriff's deed based on the Kaucher judgment, is clearly in Lewis C. Thatcher, as a *bona fide* purchaser, for value, without notice of Gottlieb's rights, even if he had any, in the premises. This ought to end the controversy.

The sale of lands under execution in no wise affects the lien of a prior judgment, nor does it necessitate any change in the proceedings required to make such lien effectual. The holder of the elder lien may at any time during the life of his lien sell the land previously sold under a junior judgment.

Upon the expiration of the statuary period of redemption he may take out his deed, and thereby obtain title paramount to and free from all sales and claims based upon junior liens.

Freeman on Judg., Sec. 377.

In Rankin vs. Scott, 12 Wheat., 179, the Supreme Court of the United States (Marshall, J.), says, "The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to a prior satisfaction out of the subject it binds, unless the lien be intrinsically defective, or be displaced by some act of the party holding it, which shall postpone him in a court of law or equity to a subsequent claim."

Therefore, it followed, as was held in that case, that a junior sheriff's sale and deed on execution over a senior judgment, where judgments are liens, gives the title to the purchaser against a senior execution and sale on a junior judgment. The rule is not only universal, but as old as the law of liens itself, and is inseparably an essential part of it.

"Priority is the very essence of the lien and its primary object."

See also Rorer on Jud. Sales, Sec. 812.

There was nothing intrinsically defective in this judgment. Its lien has been shown to be perfect, and it has not been displaced by any act of the defendant.

In the case of Kirk vs. Vonberg, 34 Ill., 448, *supra*, it was held that a prior sale under an execution issued upon a junior judgment would not, and did not at all effect the rights of the subsequent purchaser under a judgment to which was given the priority of lien.

In Rogers vs. Dickey, 1 Gilm., 637, the Court says:—

"In regard to judgment liens upon lands created by statute the lien commences with the judgment and continues as long as the statute gives it prioity over other liens, and the circumstance of not proceeding upon it until a subsequent lien has been obtained and carried into execution, has never been considered as divesting the first judgement creditor of the right to have his judgement satisfied out of the same lands if necessary.

"The law implies notice to all subsequent incumbrancers and purchasers, and they take subject to the rights of prior incumbrances."

To the same effect is Littlefield vs. Nichols, 42 Cal, 372.

In Marshall vs. McLain, 3, G Greene, 363 (Iowa) there were two judgments. Hood & Abbott obtained their judgment in May, 1844; Donnell obtained his judgment in April, 1846.

In September, 1848, the lot was sold under the Donnell judgment, and sheriff's deed issued December, 1848. No execution issued on the Hood & Abbott judgment within a year and a day, and in April, 1850, they revived their judgement. October 1850, they issued an execution, and defendant became the purchaser and received a sheriff's deed in December, 1850.

It was contended by the plaintiff that sale on the Donnel (junior) judgment would hold the lot, although junior to the Hood & Abbott judgment, because the latter had not issued execution within a year and a day, and had thereby lost their lien.

The statute then in force did not limit the time during which such lien should continue, but in 1846, the legislature limited such liens to ten years.

The Court say (page 369):

"Under this Statute, Hood & Abbott had a right at any time within ten years from the date of the judgment to assert their lien. The judgment lost none of its efficiency by lying dormant. It was still a lien upon the property of the defendant, and all junior incumbrances must be postponed until its satisfaction, if enforced within the time limited by statute."

The judgment was revived, but this did not revive the lien, because the lien was not extinct. It only gave a remedy to enforce by execution a lien which was never lost.

At common law land in general was not liable for debt, nor would any execution issue on the judgment in a personal action after a year and a day. (2 Bac. Abridge 728.) The judgment, however, was not barred, for an action of debt would lie on it.

The Court then goes on to cite a case from New York in 1802. Ehl. had obtained a judgmeet against Borst in February, 1802. In June, 1802, land was sold under it to Ellwood. Afterwadrs, an old judgment of 1798, in favor of Kane, was revived on a sci. fa. in December, 1803, and, the same land levied upon and sold to Kane.

The purchaser under the junior judgment brougnt ejectment against Kane, who purchased under the prior judgment. It was determined that the plaintiff could not recover.

The language of the Court is as follows:

"If the execution in favor of Kane had been issued within a year and a day, any lots purchased and possessed by third persons, after the docketing of the judgment, might have been sold. Here the plaintiff having lain by for more than a year and a day after he obtained judgment, it became necessary to revive it against the original defendants, which, when revived, was of the same force and effect, and, of course, liable to be proceded upon in the same manner as if the time within which an execution might have been issued had not been suffered to elapse."

See also—

Jackson vs. Shaffer, 11 Johns, 513.

Ridge xs. Prather. 1 Blackfd, 401, where the question is ably considered.

V.

Complainant's Hands are Unclean; and His Sheriff's Deed is Void, Because His Judgment for $2,171 Against Samuel H. Thatcher was Erroneous and Fraudulent.

This subject is so ably and exhaustively handled in the opinion of Mr. Justice Brewer, that we will not attempt to elaborate it at any extent. We desire to observe, however, that there is more than enough to show the unclean hands of Joseph Gottlieb wholly outside of the many dark matters that at once appear when we go back of his judgment. His seizere of the furniture before this note matured was not involved in his action against Samuel Thatcher. Nor was the slaughter of the securities, or the fraudulent procurement and sale on execution of the Anna C. McCormick note.

But we are permitted to go back of Mr. Gottlieb's judgment and to show that there never was any *real* trial that the pretended trial was a sham, and that Gottlieb's debt was extinguished and that the judgment was fraudulent and void as against Lewis C. Thatcher who was a stranger to it, with a *pre-existing* right to the property in suit, which was injuriously affected thereby. In addition to the many cases cited in the opinion of Mr. Justice Brewer we submit the following authorities.

In the case of Webster vs. Reid, 11 How. 437, 460 (1850) the Court say: "When a judgment is brought collaterally before the Court as evidence, it may be shown to be void upon its face by a want of notice to the person against whom judgment was entered or for fraud."

In Mitchell vs. Post, 21 Wall, 398, 426, the Court say:

"Judgments of any Court, it is sometimes said, may be impeached by strangers to them for fraud or collusion, but the proposition as stated is subject to certain limitations, as it is only those strangers who, if the judgment is given full credit and effect, would be prejudiced in regard to some pre-existing right who are permitted to set up

such a defence. Defences of the kind may be set up by such strangers. Hence the rule that whenever a judgment or decree is procured through the *fraud of either of the parties*, or by the collusion of both, for the purpose of defrauding some third person such third person may escape from the injury by showing even in a collateral proceeding the fraud or collusion by which the judgment was obtained.

Third persons only, however, can set up such a defence, as the rule is well settled that neither the parties nor those entitled to manage the cause or to appeal from the judgment are permitted to make such defence in any collateral issue."

The best summary and statement of the authorities which we have been able to find, as well as the latest and most exhaustive, upon the point now under consideration, is in that highly valuable and reputable work—the *American and English Encyclopedia of Law*. From Vol. 12, pp. 148h, 148i, Title *Judgments*, we quote as follows:

"Judgments *in personam* bind only the parties and privies, and therefore, third parties may impeach such judgments collaterally for reasons that could not be assigned by parties or privies. Thus they may collaterally allege *errors and irregularities which make the judgment erroneous*, (2) or that the plaintiff fraudulently obtained his judgment. (3) The fact that the defendant was indebted to the plaintiff may be collaterally disapproved (1) and also perhaps the amount of the indebtedness (2).

[In support of the above text, the editors cite numerous cases in the notes, and further elucidate the text, under the following heads, towit:]

"2. *Errors and Irregularities.*—When a third person neither a party nor a privy to a judgment, so that he can take an appeal or a writ of error thereto, is affected by the judgment, he may avoid it in a collateral proceeding not only on ground of want of jurisdiction, but also *on the ground of errors or defects which make the judgment erroneous.*

Freeman on Judg. (3rd ed.) § 337.
Downs vs. Fuller, 2 Metc. (Mass.) 135.
Laflin vs. Field, 6 Metc. (Mass.) 287.
Leonard vs. Bryant, 11 Metc. (Mass.) 370.
Vose vs. Morton, 4 Cush. (Mass.) 27.
Tarbell vs. Jewett, 129 Mass. 457.
Safford vs. Weare, 142 Mass. 231.
Granger vs Clark, 22 Me. 128.
Miller vs. Miller, 23 Me. 22
Sidensparker vs. Sidensparker, 52 Me. 481 s.c. 83 Am. Dec. 527.
Bergman vs: Hutcheson, 60 Miss. 872.
Sherman vs. Union Nat. Bank 66 Miss. 684.
Griswold vs. Stewart, 4 Cow. (N. Y.) 457.
Palmer vs. McMaster, 8 Mont. 186.

"3. *Fraud.*—Third parties, creditors, *prior grantees* wife of defendant, etc., who, if a judgment were given full force and effect, would be prejudiced thereby in regard to some pre-existing right, may impeach the judgment on the ground that the plaintiff had fraudulently obtained it.

Freeman on Judg. (3rd ed.) § 335, 336.
Earl of Bandon vs. Becher, 3 Cl. & Fin. 479.
Webster vs. Reid, 11 How. (U. S.) 437.
Michaels vs. Post, 21 Wall. (U. S.) 398.
Gottlieb vs. Thatcher, 34 Fed. Rep. (U. S.)435.
Hackett vs. Manlove, 14 Cal. 85.
Hammock vs. McBride, 6 Ga. 178.
Williams vs. Martin, 7 Ga. 377.
Freyendall vs. Baldwin, 103 Ill. 325.
DeAnnond vs. Adams, 25 Ind. 455.
Pierce vs. Jackson, 6 Mass. 242.
Sidensparker vs. Sidensparker, 53 Me. 481 s. c. 83 Am. Dec. 527.
Smith vs. Henderson, 23 La. An. 649.
Callahan vs. Griswold, 9 Mo. 784.
People vs. Townsend, 37 Barb. (N. Y.), 520.

Bergman vs. Hutcheson, 60 Miss., 872.

Bridgeport F. & M. Ins. Co. vs. Wilson, 34 N. Y., 275.

Richardson vs. Trimble, 38 Hun. (N. Y.), 409.

Warwick vs. Petty, 44, N. J. L. (15 Vr.) 542.

Great Falls Mfg. Co. vs. Worster, 45 N.H., 110.

Townsend vs. Kerns, 2 Watts, (Pa.) 180.

Hall vs. Hamlin, 2 Watts (Pa) 354.

Mitchell vs. Kintzer, 5 Pa. St. 216.

Biddle vs. Tomlinson, 115 Pa. St., 299.

Appeal of Second Nat. Bank of Titusville, 85 Pa. St., 528.

Rodrigues vs. Lee, 26 Tex, 32.

Murchison vs. White, 54 Tex. 78.

Atkinson vs. Allen, 12 Vt. 619.

Subsequent vendees may not impeach the judgment for fraud.

J. Hogg vs. Link, 90 Ind. 346.

Johns vs. Pattee, 55 Iowa 665.

Smith vs. Keen, 26 Me., 411.

Nor any person not injured thereby.

Mosley vs. Mosley, 15 N. Y. 334.

"1. *Fact of Indebtedness.* A third party whose rights are affected may prove that there was no debt due from the judgment debtor.

Henderson vs. Thornton, 37 Miss., 448.

Bergman vs. Hutcheson, 60 Miss 872.

2. Whether a third party may prove collaterally that the judgment was for too large an amount has been disputed. In some cases that right has been denied because it did not invalidate the judgment.

Willard vs. Whitney, 49 Me. 235.

Eureka Iron & Steel Works vs. Bresnahan, 66 Mich. 489.

Swihart vs. Sharun, 34 Ohio St. 432.